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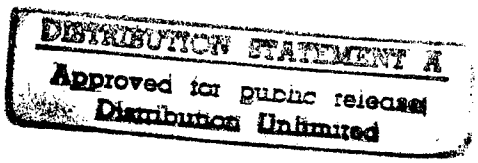

East Europe

Recent Legislation

East Europe
Supplement
Recent Legislation

JPRS-EER-91-141-S *23 September 1991*

CONTENTS

Law on Private Ownership, Private Activities, Free Initiatives

91P20462A Tirana BASHKIMI in Albanian 23 Aug 91 p 2

["Text" of law No. 7512 on permitting and protecting private ownership, free initiative, independent private activities, and privatization promulgated on 15 August by Decree No. 22 of President of the Republic Ramiz Alia]

[Text] With the aim of establishing a new economic system and implementing the transition from a system with a centralized and controlled economy to an economic system based on free market principles, on the basis of articles 10, 11, 12, 13, and 16 of Law No. 7491 of 29 April 1991, entitled "On the Main Constitutional Provisions," upon recommendation of the Council of Ministers.

The People's Assembly of the Republic of Albania resolves:

Article 1

Private ownership, free initiative, independent private activities, business dealings, foreign investments, the right to employ and to be employed, the privatization of state property, and the entire process of the conversion of the economy of the Republic of Albania from an economy which is planned and controlled by the state to a free market economy are permitted and protected in the Republic of Albania.

Article 2

Albanian or foreign subjects can carry out the following private activities, (without being limited to the following):

a) as individuals;

b) in partnerships;

c) in collectives or cooperatives;

ch) by forming enterprises, various stock companies or those with limited responsibility, joint stock companies, and other possible entities;

d) by forming banks, charitable foundations and institutes, and other possible entities.

All the above activities are regulated by law.

Article 3

All sectors of the economy are free to be privatized and to carry on private activities, including enterprises, institutions, and other state units, in the transition to private ownership in all fields of activity of industrial and artisan production, as well as agriculture, construction, transportation, banking services, domestic and foreign trade, communal services, vital services, scientific research, culture and the arts, legal services, charitable services, foundations, and other possible fields.

Enterprises or other units which are of special importance for the national economy: the energy and ore industries, the petroleum and gas industries, post, telecommunications, forests and waters, highways and railroads, seaports, airports, air and rail transport, can be privatized in specific cases, by law.

The enterprises and state units mentioned in Paragraph 2 of this article are free to create joint enterprises with foreign capital in accordance with the laws in force.

Article 4

Private physical and juridical persons, both citizens and foreigners, carry on private economic activity with their own financial resources, with credits, shares of stocks, and other things.

Article 5

The subjects mentioned in Article 2 of this law gain the right to operate by registering with the court of the district in which they carry out their activity.

To register, they present to the court an application which states the purpose of the activity and, when it is a matter of a partnership, a company, etc., they present the contract or the agreement and statute governing their activity.

Within 10 days of the date that the decision becomes final the court sends a copy of the decision to the financial organ under its jurisdiction and records the real estate of the subjects.

When, on the basis of a justified decision of the court the application is not accepted, the subjects have the right to appeal to the court of the second instance within 10 days of the date of the proclamation of the decision and the decision of this court is final.

When the court does not take action within 10 days of the date that the application is presented, the request is considered to be automatically approved.

Article 6

Private physical or juridical persons, citizens or foreigners, who carry out their activity on the basis of this law, set the prices and fees for products and services, on the basis of demand and supply.

For goods and services, for which competition is limited because of the monopolistic situation or because of evident difficulties and deficiencies in supplying the market, as well as for some goods and services which are essential for the population, the Council of Ministers sets, by special decision, the maximum limits for prices and fees. This decision remains in force up to one year from the date of its proclamation.

Article 7

Private physical and juridical persons, citizens and foreigners, obtain the material-technical base for the exercise of their activity by means of contracts with state sectors, directly in free trade, as well as by means of juridical or physical persons who are citizens or foreigners, in accordance with export-import legislation in effect.

Article 8

The Ministry of Finance sets regulations in regard to financial documentation in regard to the manner of calculating the fiscal contribution and the payment schedule and in regard to the control over obligatory social security in the private sector. It also establishes the criteria for calculating profit for private physical and juridical persons, citizens and foreigners, who carry on private activities in Albania.

In the exercise of their activity, private physical and juridical persons, citizens and foreigners, keep regular accounts and the appropriate registers in accordance with the specific law.

Article 9

Private physical and juridical persons, citizens and foreigners, have the right to open the appropriate accounts in Albanian banks and in foreign banks in Albania and to carry out liquidation operations by means of these banks.

Private physical and juridical persons, citizens and foreigners, submit the annual balance and a statement of revenues, losses, and profits and file them with the financial organ of the jurisdiction in which they are carrying out their activities.

Article 10

Private activity in a partnership is carried out by combining the capital of two or more Albanians or foreigners. Economic and financial relations are regulated on the basis of a contract which is signed by them. The contract specifies the purpose of the activity, the capital invested by each member, the share of the profits due to each partner in proportion to the amount of money invested, the length of time the partnership will be in existence, the manner of its liquidation, and other elements.

The partners are in solidarity both in regard to the rights and in regard to the duties which derive from the partnership contracts when it is a matter of an association between individuals.

Article 11

Private activity by collectives or cooperatives for trade, production, services, etc. is carried on in accordance with the statute and rules approved by them. These documents should specify the purpose of the activity, the degree of participation in the capital, the manner of organization and management, the form of distribution of revenues among members, the regulations on employing and paying workers who are not members and other regulations dealing with economic-financial obligations.

Article 12

Various stock companies or enterprises and similar entities which are created with monetary and material capital, according to the case, by one or several individual Albanians or foreigners and by shares of stock, carry out their activity on the basis of the contract and statute approved by them which specify the purpose of the activity, the base capital, the administrative management, economic-financial, contractual, and employment relations and other elements.

Article 13

Joint enterprises which are created between enterprises or state units by private foreign subjects, by private Albanian subjects, or by both Albanian and foreign private subjects, carry out their activity on the basis of a contract and a statute approved by them and the pertinent legal provisions.

Article 14

Private juridical and physical persons, citizens or foreigners, can sell or rent to other physical or juridical persons, citizens or foreigners, enterprises, various units or buildings, in accordance with a special contract which will be signed between them.

The sale or rental of the land on which these buildings are located is regulated by Article 21 of this law.

Article 15

Private activities are carried out in accordance with the provisions in effect dealing with quality standards, monitoring the means of taking measurements and the accuracy of measurements, hygiene, working conditions, technical security, environmental protection, etc., and they are monitored by state organs charged with duties in these fields.

Article 16

After this law goes into effect and at the beginning of each year, the Ministry for Economic Relations with Foreign Countries, in cooperation with the Ministry of the Economy, determines the quantity of export and import goods.

Article 17

Foreign persons who carry on economic activity have the right to transfer capital outside the state as well as their portion of the profits in hard currency.

Private physical and juridical persons which carry on economic activity on the basis of this law have the right to self-financing in leks and foreign currency.

The exchange of Albanian currency into foreign currency and vice versa takes place on the basis of the currency exchange rate set by the Albanian State Bank or on the private free trade market in currency.

Physical or juridical persons, citizens or foreigners, have the right to receive credits in leks and in hard currency from the Albanian State Bank or from other banks, state or private, Albanian or foreign.

Article 18

Employment relations in private activities are regulated by contracts which are freely signed by the parties. Labor legislation provisions apply in regard to issues which are not stipulated in the work contract.

Article 19

The workers are hired by the private employer himself by registering them in the enterprise book and informing the labor organs or the jurisdiction in which he performs his activity.

In private activity, the employers are obliged to provide insurance for their employees. The latter benefit from all the rights stipulated in the law "On State Social Security of the Republic of Albania."

Article 20

Workers who become surplus as a result of the process of the privatization of the state sector are treated in accordance with specific provisions on social assistance.

Article 21

Land for construction with payment is given as property to Albanian private physical and juridical persons, with buying and selling rights.

Foreign physical and juridical persons are given land for construction by Albanian physical and juridical persons only on a rental basis for a period of up to 19 years, in accordance with a special contract.

The prices for sale and rental of the land for construction, which is state property, are set by the financial organ of the local government in the jurisdiction in which the land is located, according to the criteria set by the Council of Ministers and according to supply and demand.

The sale and rental of land for construction are carried out by the aforementioned financial organ. The sums paid for the land are intended for and are used for the development of the infrastructures of the local government jurisdiction.

Albanian juridical and physical persons who own existing buildings of any type are also the owners of the land on which these buildings are located. When these buildings are bought by foreigners they have ownership rights only in regard to the building while the land on which the building is located is rented according to the second paragraph of this article.

Article 22

The National Agency for Privatization is established in the Council of Ministers to deal with the conversion of state property to private property. The agency is responsible for the management, organization, and coordination of work in regard to the privatization process. It gives authorization, proclaims the form, and sets the time and order for the conversion of objects of state ownership to private ownership.

The National Agency for Privatization cooperates with the Preparatory Commission for the Privatization Process in the Ministry of the Economy. This commission coordinates its work with the subcommissions for privatization which are being established in the ministries, the other central institutions and the organs of local power for the evaluation of the object and the preparation of the appropriate documentation, which is presented to the National Agency for Privatization. This agency is responsible for renting objects which are state property.

Article 23

The conversion of state property to private property is carried out by means of auction, the free sale of shares of stock, the gratis granting of state stocks to Albanian physical persons, and by any other suitable method.

The evaluation of state property which will be privatized is carried out by taking account of the physical situation, the location, and the nature of the production and service of the object.

State property which is privatized cannot change its destination for two years. Any change in destination within this period must have the approval of the National Agency for Privatization.

Article 24

Auctions are organized and proclaimed by the National Agency for Privatization. They are open, free, and equal for all. Participants in the auction must present documents in various forms recognized by law which certify their ability to pay.

At the beginning of the auction, only physical and juridical persons with Albanian citizenship can participate. If the object is not sold in the second session of the auction, foreign physical and juridical persons can also participate in the auction, with the approval of the National Agency for Privatization.

The evaluation and sale of circulating capital take place on the basis of current state wholesale prices at the time of sale.

The owner proclaimed by the auction gains the right to the property by making full payment for the object or by partial payment. When partial payment is made, the

remaining portion of the value of the object is distributed free of charge or is sold to workers in the object in the form of shares of stock. The portion of the value of the facility which is distributed free of charge or sold to the workers is determined by the National Agency for Privatization. The portion of the value of the facility which is distributed free of charge must not be greater than 30 percent of this value.

Article 25

The privatization of state property by means of the sale of stocks is organized and proclaimed by the National Agency for Privatization which also sets the nominal value of the share of stock.

The regulations for the issuance, distribution, safekeeping, and sale of shares of stock are established by the Ministry of Finance, in cooperation with the Albanian State Bank.

Article 26

Disagreements in regard to relations of debtors and creditors, both state and private, which appear at the time of the conversion of state enterprises or units to private property are resolved in agreements between the parties and, when no agreement can be reached, they are resolved by the court.

Article 27

The revenues resulting from the conversion of state property to private property are deposited in the state budget.

Article 28

Foreign investments and private property of physical and juridical persons, citizens and foreigners, on the territory of the Republic of Albania, cannot be expropriated or nationalized and cannot be the object of other measures equivalent to nationalization or expropriation, with the exception of specific cases in the interest of public use and always with payment and with full compensation.

The compensation, in the cases mentioned in the first paragraph of this article, will be equivalent to the investment or to the value of the appropriated or nationalized property on the date on which the party was notified that the property would be appropriated and this compensation will be paid without delay, along with the bank interest accumulated up to the date of payment. The compensation is fully realizable and freely transferrable.

If the payment of the compensation is delayed, the amount of the compensation should not place the Albanian or foreign physical or juridical person in a position which is less favorable that it would have been if the compensation were paid as of the date of the expropriation or nationalization.

Article 29

The legality of the expropriation or nationalization or any other equivalent measure and the amount of the compensation can be the subject of examination by the court.

Article 30

Decree No. 7476 of 12 March 1991 "On Permitting and Protecting Private Property and Activities" and other provisions in conflict with this law are abrogated.

Article 31

This law goes into effect immediately.

Law on Electing National Representatives, Township Council Members, Mayors

91BA1071A Sofia OTECHESTVEN VESTNIK (supplement) in Bulgarian 28 Aug 91 pp 1-16

["Text" of Law on the Election of National Representatives, Township Council Members, and Mayors published in DURZHAVEN VESTNIK No. 69 of 22 August amended and supplemented in DURZHAVEN VESTNIK No. 70 of 26 August]

[Text]

Chapter 1. General Provisions

Article 1

The present law regulates the election of national representatives, township [obshtina] council members, and mayors, and the procedure for terminating their mandates.

Article 2

(1) These elections are based on the right to universal, equal, and direct voting by secret ballot

(2) All citizens of the Republic of Bulgaria, 18 years of age or older, with the exception of those legally discqualified or individuals sentenced to prison terms have the right to vote.

(3) The right to elect township council members and mayors is granted exclusively to citizens whose residence is in the township or, respectively, the settlement, as well as to citizens who have registered their addresses in that territory no less than two months prior to election day.

Article 3

(1) Any citizen of the Republic of Bulgaria, who does not hold another citizenship, who is 21 years of age or older, who is not considered legally disqualified, and is not serving a prison sentence has the right to be elected a national representative.

(2) Any citizen of the Republic of Bulgarian 18 years of age or older, who is not legally disqualified, is not serving a prison sentence, and whose address registration in the territory of the township or, respectively, the settlement, was dated no less than two months prior to the election day has the right to be elected a member of the township council or a mayor.

Article 4

(1) A voter has the right to cast a single vote for national representative, a single vote for a township council member, a single vote for mayor of the township, and a single vote for mayor of the settlement.

(2) All votes are equal.

Article 5

(1) (Amended D.V. No. 70, 1991) Elections for national representatives are based on a proportional representation system with fixed electoral lists of parties, independent candidates, coalitions of parties, and coalitions of parties with independent candidates, drawn up by electoral district.

(2) (Previously paragraph 4, amended D.V. No. 70, 1991) The election of township council members is based on a proportional representation system with electoral lists of parties, independent candidates, coalitions of parties, and coalitions of parties with independent candidates in the townships, each of which is a multiple-mandate electoral district.

(3) (Previous paragraph 5, amended D.V. No. 70, 1991) Township mayors are elected directly by the township voters.

(4) (Previous paragraph 6, amended D.V. No. 70, 1991) Mayors in settlements are elected directly by the voters of the respective settlement.

Article 6

(1) The elections take place on a nonworking day and on the same day in the entire country.

(2) The president of the Republic of Bulgaria will schedule elections for national representatives, township council members, and mayors, and announce the date of the elections no later than 50 days before the appointed date.

Article 7

(1) The organizational and technical preparations for the elections shall be made by the Council of Ministers, the provisional executive committees, and the provisional managements.

(2) The cost of the organizational and technical preparations for the elections will be assumed by the state within the limits of the state budget.

(3) All documents, petitions, complaints, certificates, and other documents related to this law shall be exempt from fees.

Chapter 2. Electoral Lists

Section I. Election of National Representatives

Article 8

The elections shall be held on the basis of two electoral lists: for national representatives and for township council members and mayors.

Article 9

The voter lists will be compiled in the townships and the settlements which keep population records, and will be signed by the chairman, deputy chairman, and secretary

of the provisional executive committee and, respectively, the mayor and the secretary of the provisional administration.

Article 10

(1) Generals, admirals, officers, and career sergeants and master sergeants, and civilian employees and workers in the Armed Forces of the Republic of Bulgaria shall be registered in the voters lists at their place of residence, in accordance with their registered address on the day of the elections.

(2) Military conscripts in the Armed Forces of the Republic of Bulgaria will only be included on the voter list for the election of national representatives in the electoral sections closest to their military units; the lists will be drawn up by the provisional executive committees.

(3) In each military unit the list of the conscripts will be drawn up under the supervision of the commanding officer, who must sign it and send it to the respective provisional executive committee of the township, so that it may be included in the voter lists of the township or settlement of the territory in which the unit is located, no later than 35 days before the elections.

Article 11

Bulgarian citizens who are permanent residents of a foreign country or who are visiting a foreign country but are in Bulgaria at the time of the election will be registered in the voter lists by personally stating their wish to participate in the elections. The act of voting will be noted in their foreign passports.

Article 12

(1) Voter lists will be drawn up separately for each electoral section.

(2) The voter list will include the names of the voters whose address has been registered in the territory of the respective township or settlement no less than two months prior to the election.

(3) The voter list will also include the names of the voters who temporarily reside in the territory of the respective township or settlement if they have registered their addresses in that area no less than 60 days prior to election day. The provisional executive committees or the provisional administrations will immediately provide official information about those who reside temporarily in the township or the settlement and are included on the voter lists they have drawn up for the townshipa or settlements of their permanent residence, so that their names may be deleted from the voter lists where they resided previously.

(4) The electoral list will also include the names of the citizens meeting the conditions stipulated in paragraphs 2 and 3 and who, prior to the day of the election, have reached the age of 18, as well as citizens who, by that date, have completed their prison sentences and are no longer considered legally disqualified.

(5) The voter list shall include each voter's three names, place and date of birth, and identification number, listed according to his address. If in the six months preceding the elections there has been a change in the name of the settlement, street, district, housing complex or numbering, the voter list will also include the old names and numbers.

(6) A voter's name can be inscribed on only one voter list.

(7) The names of citizens who have lost their voting rights or have passed away before election day shall be deleted from the voter list.

Article 13

(1) The voter lists shall be made public by the provisional executive committees and provisional administrations no later than 30 days prior to election day.

(2) The provisional executive committees and, respectively, the provisional administrations shall grant on demand copies of the prepared voter lists to the political parties, for a fee.

Article 14

(1) A voter has the right to request a change in the voter list by entering or deleting a voter's name, eliminating other errors, or correcting incomplete information in the lists.

(2) Such requests may be filed verbally or in writing with the provisional executive committee or provisional administration which, within three days, must consider the petition and issue a ruling with an explanation.

(3) Within three days after the ruling by the authorities, or after the three-day deadline as per the preceding paragraph has elapsed, the petitioner may appeal the ruling to the rayon court which, within three days, in an open session, in the presence of the petitioner and the representative of the provisional executive committee or provisional administration, will consider the petition and make a ruling which will be made public immediately. The court's ruling may not be appealed.

(4) Corrections in the voter lists are made public immediately.

Article 15

A certificate for voting elsewhere may be issued exclusively to candidates for national assembly and their patrons, to observers, members of the electoral commissions, and members of initiative committees for the nomination of independent candidates, and to other individuals involved in electoral procedures. The certificate for voting elsewhere must be signed by the

chairman, deputy chairman, and secretary of the township council. A special record is kept on issued certificates. Certificate holders must state in writing that they shall vote in only one place.

Article 16

The original voter lists, as well as the rest of the electoral documents, must be kept by the newly elected township council until the next election. Until the council has been set up, they are kept by the authorities responsible for their drafting.

Article 17

Voter lists in hospitals, maternity homes, sanatoriums, rest homes, homes for the aged, and other similar institutions, as well as vessels with Bulgarian registry, are drawn up by the head of the respective institution or the captain of the vessel, on the basis of an identification document (personal passport). The head of the respective establishment, or the ship's captain, must inform the provisional executive committees or provisional administrations at the place of residence of the individuals included on the list, so that they may be taken off the other voter lists. People who have entered such institutions on election day are not included in the voter lists and do not vote.

Section II. Election of Township Council Members and Mayors

Article 18

(1) Separate voter lists are drawn up by the provisional executive committees and provisional administrations for elections for township council members and mayors.

(2) Such lists may include only individuals indicated in Article 2, paragraph 3, of this law.

Article 19

(1) The voter lists do not include Bulgarian citizens residing abroad and conscripts in the Armed Forces, nor Bulgarian citizens who are members of the crews of ships under Bulgarian registry and who are absent from the country.

(2) Certificates for voting elsewhere may not be issued.

(3) For the second round of mayoral elections, the voter lists are updated with the names of the individuals who have acquired the right to vote in the time between the rounds.

Article 20

The rules governing the election of national representatives as per the preceding section apply to unresolved problems in this section.

Chapter 3. Electoral Districts [Izbiratelni Rayoni]

Section I. Election of National Representatives

Article 21

(1) For the purpose of electing national representatives, the country's territory is divided into 31 electoral districts, including three in Sofia City and two in the former Plovdiv Okrug. The remaining electoral districts coincide with the boundaries of the former okrugs.

(2) The boundaries of the electoral districts, their names, numbering, and electoral documents are established with a ukase issued by the president of the Republic of Bulgaria no later than 50 days prior to the day of the election.

(3) The Central Electoral Commission shall determine the number of mandates per electoral district no later than 40 days prior to election day, on the basis of a standard rate of representation for the entire country, based on population.

Section II. Election of Township Council Members and Mayors

Article 22

The electoral documents for township council members and mayors will be based on a ukase issued by the president of the Republic of Bulgaria no later than 50 days prior to election day.

Article 23

(1) The territory of each township and of Sofia City will be a multiple-mandate district for the election of township council members and a single-mandate district for the election of a mayor.

(2) The territory of each settlement is a single-mandate electoral district for mayoral elections.

Article 24

(1) The township council consists of the following:

1. In a township with a population not exceeding 2,000 people, 15 council members;

2. In a township with a population not exceeding 5,000 people, 21 council members;

3. In a township with a population not exceeding 20,000 people, 33 council members;

4. In a township with a population not exceeding 50,000 people, 45 council members;

5. In a township with a population not exceeding 100,000 people, 65 council members.

(2) The Sofia City Council shall consist of 101 council members.

Chapter 4. Electoral Sections [Izbiratelni Sektsii]

Article 25

Voting and counting of ballots will take place at an electoral section.

Article 26

(1) The provisional executive committees shall set up joint electoral sections for the elections for national representatives, township council members, and mayors.

(2) The district electoral commissions shall issue the numbers of the township electoral commissions for the respective district; the township electoral commissions shall issue the numbers of the electoral sections within the township, which will include the indicators for the respective district and township commissions and electoral sections.

(3) The electoral sections must be set up no later than 45 days before election day.

Article 27

(1) Each electoral section shall consist of no more than 1,000 people. Settlements with more than 1,000 people will set up as many electoral sections as the number of people can be divided by 1,000. If the balance exceeds 500 people, a separate section shall be set up; if there are less than 500, the voters are apportioned among neighboring sections.

(2) The township electoral commission may set up sections consisting of less than 500 people if so proposed by the provisional executive committee.

Article 28

(1) Electoral sections are set up for the election of national representatives, as follows:

1. In hospitals, maternity homes, sanatoriums, rest homes, homes for the aged, and other similar establishments, if they include at least 30 voters;

2. On Bulgarian registry ships with at least 20 voters aboard, not located within the country's borders on election day.

(2) The voters in the sections as per item 2 of the preceding paragraph shall vote for the candidates in the electoral district in which the vessel is registered.

Chapter 5. Electoral Commissions for National Representatives, Township Council Members, and Mayors

Article 29

(1) The following electoral commissions shall be set up for holding the elections according to this law:

1. Central, for the entire country. This commission is appointed for the duration of the mandate of the National Assembly;

2. District, for each electoral district, for the purpose of electing national representatives;

3. Township, for each township. Such commissions are appointed for the duration of the mandate of the township councils;

4. Sectional, for each electoral section;

5. Sofia, for the election of council members for the Sofia council and for the mayor of Sofia City. This commission is appointed for the duration of the mandate of the Sofia council.

(2) The Central Electoral Commission is appointed by the president of the Republic of Bulgaria, after consultations with political forces, no later than 50 days before election day. It consists of a chairman, deputy chairmen, secretary, and members and representatives of political forces and of nonparty people. The majority of the members of the Central Electoral Commission must be lawyers. The Central Electoral Commission consists of no more than 25 members.

(3) Expert and working groups of specialists are set up under the Central Electoral Commission.

Article 30

(1) The structure of the district and township electoral commissions is determined by the Central Electoral Commission, based on the proposal of the provisional executive committees, following consultations with the political parties, and no later than 40 days prior to election day.

(2) The township electoral commissions appoint sectional electoral commissions based on the stipulations of paragraph 1, no later than 35 days before election day.

Article 31

(1) A district or township electoral commission consists of a chairman, two deputy chairmen, and a secretary who, if possible, should be lawyers, and seven members per commission, representing political parties or coalitions, and nonparty people.

(2) The district and township electoral commissions may set up expert and working groups of specialists.

Article 32

A sectional electoral commission consists of a chairman, a deputy chairman, a secretary, and between three and seven members.

Article 33

(1) Members of the provisional executive committees and provisional administrations, servicemen in the

Armed Forces or in the Ministry of Internal Affairs, as well as candidates for national assembly, or for township councils, or for the position of mayors, may not be members of electoral commissions.

(2) The sessions of the electoral commissions have a quorum if more than one-half of their members are present. Resolutions are passed by two-third majority of those present.

(3) Patrons have the right to attend the meetings of the commissions in a consultative capacity and for purposes of formulating objections.

Article 34

(1) (Amended D.V., No. 70, 1991) The Central Electoral Commission:

1. Supervises the implementation of this law, and provides systematic guidance for the activities of the electoral commissions, and monitors the activities of district electoral commissions;

2. Considers complaints filed against legal acts and activities of district electoral commissions and issues final rulings on such complaints within three days; these rulings are made public;

3. Records and makes known publicly the participation in the election of coalitions and parties, as well as the colors of their electoral ballots. No party or coalition has the right to use or register the color of a ballot already registered by another party or coalition. Parties and coalitions have the right to retain the color of the ballots they used in the election for the Grand National Assembly;

4. Supervises the registration of district candidate tickets for national representatives;

5. (Old item 6, amended D.V. No. 70, 1991) Makes known publicly the election results for the National Assembly and issues certificates to the elected national representatives;

6. (Old item 7, amended D.V. No. 70, 1991) Defines the conditions and procedure for the participation of observers, both domestic and foreign, and issues the respective document to them;

7. (Old item 8, amended D.V. No. 70, 1991) Checks the voter lists after the elections; should the Commission establish that a citizen has voted more than once in violation of this law, it informs the law enforcement authorities of this fact.

(2) The resolutions of the Central Electoral Commission may be appealed to the Supreme Court within three days after their announcement; within a three-day period the Supreme Court must issue a final ruling, which is immediately made public.

Article 35

(1) The district electoral commissions:

1. Supervise the implementation of this law in the territory of the electoral district and supervise the activities of the section electoral commissions concerning the election of national representatives;

2. Supervise the prompt and accurate organization of electoral sections;

3. Supervise the prompt drafting and publication of voter lists for National Assembly elections and the issuing of certificates for voting elsewhere;

4. Supply the section electoral commissions with ballot boxes, ballot envelopes, ballots and forms for recording the election of national representatives, and supervise their printing, storage, and distribution among sections, and their transportation;

5. Consider objections to decisions and actions by sectional electoral commissions on the election of national representatives, and issue rulings on the objections within a three-day period;

6. Register the lists of candidates for the national assembly in the electoral district and announce them to the population;

7. Register the patrons of the candidates for the national assembly from the various parties, coalitions, and independent candidates, and issue certificates to them;

8. (Amended D.V. No. 70, 1991) Determine and announce, within no more than three days, the results of balloting in the electoral districts, based on the records of the sectional electoral commissions;

9. Submit to the Central Electoral Commission the paperwork on the election of national representatives.

(2) The resolutions of the district electoral commission may be appealed to the Central Electoral Commission within three days of their announcement; within a period of three days the commission must issue a final ruling which is immediately made public.

Article 36

(1) The township electoral commissions:

1. Supervise the implementation of this law and the activities of the sectional electoral commission for election of township council members and mayors on their territory;

2. See to the prompt drafting, announcement, and publication of the electoral lists for elections of township council members and mayors;

3. Set up sectional electoral commissions;

4. Supply the sectional electoral commissions with ballot boxes, ballot envelopes, ballots, forms, and other documents connected with the election, and supervise their printing, storage, and distribution among sections, and their transportation;

5. Consider complaints against legal acts and actions by the sectional electoral commissions on elections for township council members and mayors, and issue final rulings on these complaints within a three-day period;

6. Register the candidate lists for the election of township council members and mayors and make them public;

7. Register the patrons of the candidates for township council members and mayors and issue certificates to them;

8. Determine and make public within two days after receiving the final records, the results of the election for township council members, based on the records of the sectional electoral commissions, make them public, and issue certificates to the elected council members;

9. Determine the results of the elections for mayors, make them public and issue certificates to the elected mayors.

(2) The decisions of the township electoral commission may be appealed to the rayon court within three days of their promulgation; the court considers the complaint within three days and issues a final ruling which is immediately made public.

Article 37

(1) The sectional electoral commissions:

1. Ensure the free and peaceful voting procedure in the electoral section;

2. Ensure the voting sequence;

3. Approve the envelopes with the ballots;

4. Count the ballots and draft, make public, and submit the records on the results of the vote to the district and township electoral commissions no later than 24 hours after the results of the vote have been announced;

5. Consider complaints on rule immediately on them.

(2) In the course of the elections, the instructions of the chairman of the sectional electoral commission are binding to all citizens in the voting premises. Such instructions may be rescinded by decision of the commission.

Article 38

Voters who do not live in the respective sections and districts may be members of the sectional electoral commissions.

Article 39

(1) Political forces and independent candidates submit a list with the names of individuals who will replace their representatives in the sectional, township, and district electoral commissions should their representatives be permanently unable to exercise their functions. The substitution takes place as follows: for sectional electoral commissions, by decision of the township electoral commissions; for township and district electoral commissions, by decision of the Central Electoral Commission.

(2) Only the patrons for the respective candidates are allowed to attend the commission sessions in an advisory capacity and to formulate objections. On their request, the objections are entered in the minutes of the commission sessions.

Article 40

(1) Individuals who are members of the electoral commissions are exempt from their official duties for the time required for their work in the respective commission. For that period of time they are given unpaid official leave. The remuneration of the members of the electoral commissions is paid out of the state budget and is set by the Central Electoral Commission. The amount of the remuneration paid to the members of the Central Electoral Commission is set by the president of the Republic of Bulgaria.

(2) In the exercise of their functions, the individuals who are members of the electoral commissions are considered officials in terms of liability under the Penal Code.

(3) In the course of the performance of their duties, the members of the electoral commissions may not display identifying marks of a party or coalition involved in the electoral campaign, or participate in such campaigning.

Chapter 6. Candidates for the National Assembly, Township Councils, and for the Position of Mayor

Section I. Candidates for the National Assembly

Article 41

(1) Candidates for the National Assembly are listed in order on the candidate lists for each respective multiple-mandate electoral district.

(2) The lists of candidates in the electoral districts are drawn up and submitted for registration by the party or coalition leaderships.

(3) The parties or party coalitions which submit lists of candidates must meet the requirements of this law and the Law on Political Parties.

(4) Organizations and movements which are not registered as parties may not participate in electoral coalitions or nominate their candidates for the National Assembly, township councils, or the position of mayor.

(5) Independent candidates must be registered on a separate list of candidates, with the collected signatures of 2,000 voters in their respective electoral district. In order to nominate an individual, an initiative committee consisting of five to seven voters is established and is registered with the respective district commission; this committee organizes the drawing up of a list required for the nomination of the candidate.

(6) The lists as per paragraph 5 must include the three names of the individual, his exact address, identification number, and signature.

Article 42

Should the Central Electoral Commission or the district electoral commissions determine that an independent candidate list is not supported by the required number of voters, his registration will not be accepted, or, if the candidate has already been registered, it will be invalidated.

Article 43

(Amended D.V. No. 70, 1991)

(1) A candidate for national representative may be registered by only one party or coalition. Candidates for the National Assembly may be registered in no more than two multiple-mandate electoral districts.

(2) If a candidate for National Assembly is registered in more than two electoral districts, the first two in the registration are valid. The district electoral commissions inform the Central Electoral Commission of the registrations 24 hours after the expiration of the deadline as per this law. The Central Electoral Commission announces the invalidity of the registration within three days and immediately informs the respective party or coalition and the candidate of its decision.

(3) (Old paragraph 4, amended D.V. No. 70, 1991) Parties or coalitions determine the order in which the candidates' names appear on the candidate lists.

(4) (Old paragraph 5, amended D.V. No. 70, 1991) A candidate list may include an unlimited number of candidate names.

Article 44

(1) Electoral coalitions submit joint lists in the individual electoral districts. In such cases, the participating parties and independent candidates may not submit separate lists.

(2) A party or an independent candidate may participate in no more than one coalition.

Article 45

(1) The lists of candidates for National Assembly are registered in a separate record book in the electoral districts on the basis of the submission of the following documents:

1. Proposal by the party's central leadership or the initiative committee in the respective electoral district, signed by the number of voters stipulated in the law;

2. Declaration by the candidates that they agree to be registered by the parties, coalitions, or initiative committees which have nominated them;

3. A candidates for National Assembly must submit a declaration stating that he meet the stipulations of Article 3, paragraph 1, and giving his address and his identification number.

(2) The registration of the lists of candidates for National Assembly in the electoral districts must be completed no later than 30 days before election day.

Article 46

(1) If the stipulations of this law have been violated, the district electoral commission shall refuse to register the candidate and shall inform him without delay, in writing, of its decision.

(2) The refusal as per paragraph 1 may be appealed to the Central Electoral Commission.

(3) (Amended D.V. No. 70, 1991) In a final refusal, as well as in the cases stipulated in Article 43, paragraph 2, the parties, coalitions, and initiative committees that have listed a candidate may submit another candidate for registration within 10 days of the day of the refusal or of the declaration of the invalidity of the registration, but no later than 20 days prior to the election.

(4) If a candidate included in the registration lists dies or is permanently prevented from participating in the election, under the stipulations of the preceding paragraph the party, coalition, or initiative committee may submit a new candidate for registration.

Article 47

(Amended D.V. No. 70, 1991) The registration of the parties and coalitions with the Central Electoral Commission is based on the procedure stipulated in Article 45 of the present law. The parties must also submit a copy of the court ruling on the basis of which they were registered. If the parties participate in a coalition, a transcript of the court's ruling must be submitted for each one of them. Party coalitions must submit the resolution of their founding, signed by the leaderships of the respective parties, a sample of the signatures of the individuals representing them, and a sample of the seal of the coalition if such exists.

Article 48

Each list of candidates is allowed one patron per electoral section, who assists the candidates and the parties in the electoral campaign and represents their interests in dealing with state authorities, public organizations, voters, and the Central and other electoral commissions.

Article 49

(1) Candidates for the National Assembly who are employed by the state must stop working after their registration and must be given official paid leave.

(2) The time during which candidates for the National Assembly have participated in the electoral campaign is credited as labor seniority in the position in which they worked prior to their candidacy.

(3) The elected candidates who are employed in state establishments, enterprises, and commercial companies with state participation exceeding 50 percent, or else in organizations, have the right, after the termination of their mandate, to resume their previous position; if the position has been eliminated, they must be given another equivalent position within the same or, with their agreement, another state establishment, enterprise, or commercial organization with state participation in excess of 50 percent, or else in an organization.

(4) If the position previously held by the candidate has been occupied by another individual, the legal and labor relationship of this individual is terminated without advance notification.

Article 50

(1) During the electoral campaign the registered candidates for the National Assembly and their patrons may not be detained or criminally indicted unless caught in the commission of a serious crime.

(2) Starting from the registration to the publication of the results of the elections, the candidates for the National Assembly and their patrons hold the status of officials as stipulated in the Penal Code.

Article 51

A member of an electoral commission who registers as a candidate must resign from the commission.

Section II. Candidates for Township Council Members and for the Position of Mayors

Article 52

(1) The registration of lists of candidates for township council and for mayor is made by the township electoral commissions upon the proposals of the parties, coalitions, or initiative committees in accordance with the procedure stipulated in this chapter as well as the following:

1. A candidate for a township council may not be included in more than one list. Should the township electoral commission note that the same candidate for township council has been entered in more than one list, only the earliest-submitted list will be valid;

2. Independent candidates must submit 500 signatures of voters in their respective electoral district;

3. Parties and independent candidates may participate in no more than one coalition;

4. A candidate for mayor may not be nominated by more than one township. He may also be a candidate for the National Assembly. If the candidate is elected both mayor and national representative, he becomes mayor.

(2) The registration must take place no later than 30 days before the elections.

(3) The candidate lists for township councils and for mayors must meet the stipulations of Article 48.

(4) The lists of candidates for township councils and for mayors must meet the stipulations of Article 49, paragraphs 1 and 2, of this law.

(5) Individuals who have been elected mayors have the rights as per Article 49, paragraphs 3 and 4.

Article 53

If the township electoral commission determines that the independent candidate lists for township councils or mayors has not been backed by the required number of voters, the registration is rejected, or, if it has already taken place, annulled.

Chapter 7. Electoral Campaign

Article 54

(1) Citizens, parties, and candidates for National Assembly, township councils, and mayors, as well as their patrons, are free to campaign "for" or "against" the election of the candidates. They may present their electoral programs and ideas either orally or in writing at electoral meetings or in the mass media.

(2) The electoral campaign must be waged in the official language.

(3) Electoral meetings are public. At such meetings order is maintained by the organizer and the officials of the Ministry of Internal Affairs.

(4) The provisional executive committees, provisional administrations, or other state organizations and trade unions may not distribute electoral campaign materials about the candidates or engage in any other promotional activities.

Article 55

Together with the Central Electoral Commission, the minister of defense defines the procedure according to which military servicemen are acquainted with the programs of the parties and the candidates. Electoral campaigning in military units is prohibited. The commanding officers must grant military personnel free access to the press, radio, and television during their off-duty time and garrison leaves, as well as access to other electoral campaign activities in the garrison town.

Article 56

Candidates for National Assembly, parties, and coalitions must be given identical access to obtaining data needed in the electoral campaign from information sources.

Article 57

All candidates for National Assembly, parties and coalitions have the right to access to the national mass media. The means of such access are determined by a decision of the Grand National Assembly.

Article 58

(1) The editor in chief or the publisher of a daily or a periodical which has published materials violating the rights or reputation of a candidate for National Assembly, township council, or mayor, must publish their response in the first subsequent issue.

(2) The answer must be published in the same place and with the same lettering as the initial material.

(3) The answer must be published free of charge and may not exceed the size of the material to which it is responding.

Article 59

(1) In the course of the electoral campaign, the political parties, coalitions, and candidates may prepare and make use of advertising materials such as posters, placards, advertisements, slogans, appeals, addresses and other similar materials. All printed material for the campaign must indicate the political party, coalition, or candidate for National Assembly that is publishing the material.

(2) Promotional materials may be placed in areas stipulated for this purpose; they may be placed on the walls of buildings and fences by permission of the respective owner or manager.

(3) The provisional executive committees shall determine the areas where poster and other promotional materials may be placed.

(4) The destruction of promotional materials placed in accordance with the stipulated rules is forbidden before the end of the electoral campaign.

(5) The provisional executive committees or provisional administrations may, in accordance with decisions of the district electoral commissions, eliminate promotional materials which threaten the life or health of the citizens, personal or public property, or traffic safety, as well as material with an immoral content or which violate the honor and reputation of the candidates.

(6) The use of public transportation facilities in the electoral campaign is prohibited.

Article 60

(1) Unpublished results of public opinion surveys related to the elections may not be made public within 14 days of to the day of elections or on election day.

(2) Campaigning is not allowed 24 hours prior to and during the day of the election.

Article 61

Parties and coalitions which have garnered more than 50,000 votes in the election for the Grand National Assembly may receive an advance of 50 percent of the budget funds appropriated for financing the electoral campaign. Other parties, coalitions, and independent candidates may obtain funds in the guise of short-term interest-free loans from budget funds appropriated for the elections. The parties, coalitions, and independent candidates, in proportion to the votes they have garnered, will obtain additional funds after the election, or else shall have to repay the borrowed amounts according to a procedure formulated by the Council of Ministers.

Article 62

The total amount of funds for financing the electoral campaign may not exceed 30,000 leva per candidate.

Chapter 8. Voting

Article 63

(1) The voting for national representatives, township council members, and mayors, takes place in premises specially designated for this purpose by the provisional executive committees and provisional administrations.

(2) No promotional materials of parties, coalitions, or independent candidates may be placed in the electoral premises.

Article 64

(1) The balloting is opened by the chairman of the sectional electoral commission, at 0600 on election day, in the presence of more than one-half of the commission members. In the case of a lack of quorum, or if within one hour the members of the sectional electoral commission fail to show up, the chairman of the district electoral commission must summon the reserve members. The following may attend the opening of elections: candidates, their patrons, voters, representatives of parties, journalists, and observers. The commission chairman checks on the availability of the voter lists, the condition of the ballot boxes and the fact that they are empty. Ballot boxes must be closed and sealed with the seal of the township council or of the settlement, after which the voting may begin.

(2) The parties may be represented in the electoral premises only by individuals so authorized in writing by the party leaderships.

(3) Parties or coalitions may not authorize more than two representatives per section, only one of whom may be present during the voting hours.

Article 65

(1) Voting takes place from 0600 to 1900 hours. If voters who have not yet voted are in the voting premises after 1900 hours, the voting continues as long as voters remain in the electoral section.

(2) By decision of the Central Electoral Commission, voting in some sections may begin one hour earlier.

Article 66

(1) The voter must prove his identity to the chairman of the sectional electoral commission or the authorized individual authorized by showing his personal identity card; military servicemen must show their military pay book; individuals who reside abroad permanently must show their passports.

(2) The chairman of the sectional electoral commission or the individual he has authorized for this purpose will check the data of the identity card against the voter list for the election of national representatives, after which the individual is allowed to enter the voting booth. If the voter submits a certificate for voting elsewhere, the chairman of the sectional electoral commission will check the data against his identity card, enter his name in the separate voter list and attach the certificate to the list. After voting for national representative has been completed by the individual, the electoral commission will check the data of the voter against the voter list for the election of township council members and mayors and check the address registration, after which the individual will be allowed to enter the respective voting booth.

(3) A voter may state to the sectional electoral commission that he intends to vote only for national representatives or only for township council members or mayors.

(4) After the envelope with the ballot has been inserted in the ballot box for each separate type of elections, the voter will sign the respective voter list certifying that he has voted; the number, series, and date of the issuance of his identity card will be noted; a note will be made on the identity card as well.

Article 67

(1) Two groups of voting booths will be placed inside the electoral premises. The first will be for national representatives and the second for township council members and mayors.

(2) Information will be placed on the booths indicating which is for the election of national representatives and which for township council members and mayors.

(3) In the booths the voters will have an adequate supply of ballots. Providing the voters with ballots and envelopes in advance is prohibited.

(4) During the time spent by the voters in the voting booth, the presence of other individuals in the booth, including members of the electoral commissions, is prohibited, unless the voter is physically incapacitated and is unable to perform the necessary activities in voting and requests the assistance of another voter by name. In that case the permission is granted by the chairman of the sectional electoral commission and is noted in the voter list.

(5) Voting outside electoral premises is prohibited.

(6) The presence of individuals other than the members of the sectional electoral commission is forbidden within an area of three meters or less of the electoral booths if they are occupied.

(7) If order in the electoral premises must be restored, the chairman may, in accordance with a decision of the sectional electoral commission, seek the assistance of the organs of the Ministry of Internal Affairs.

(8) Armed individuals are not allowed inside the electoral premises other than in the cases stipulated in the preceding paragraph.

Article 68

(1) Voters vote first for a national representative and then for township council members and mayors.

(2) Voters are issued the ballot envelopes by the sectional electoral commission.

(3) Voters vote for national representatives by entering the respective booth, placing in the envelope the ballot containing the list of candidates they have chosen, closing the envelope, leaving the booth, and dropping the envelope in the respective ballot box. The fact that the individual has voted is noted on the voter list for the election of national representatives. The sectional electoral commission notes the fact that the individual has voted on the identity card with the inscription: "Voted for national representative." If, in the course of the voting process differences are noted between the identification number on the voter list and the identification number on the identity card of the voter, the chairman of the sectional electoral commission must note on the voter list the identification number as recorded on the identity card.

(4) Voters vote for township council members and mayors by entering the respective booth, placing in the envelope the ballot they have chosen for the election of township council members and the ballot for the election of a mayor, closing it, coming out and dropping the envelope in the respective ballot box. The fact that the individual has voted is noted on the voter list for the election of township council members and mayors. The chairman of the sectional electoral commission or a

commission member authorized by him notes the fact that the individual has voted on the identity card with the inscription: "Has voted for township council members and mayor."

(5) The ballot boxes for the election of national representatives must be white with an inscription in black letters: "Election of national representatives." The ballot boxes for the election of township council members and mayors must be black with an inscription in white letters: "Election of township council members and mayors."

Article 69

(1) If the ballot box proves to be too small to contain the envelopes of all the voters in the electoral section, envelopes with the ballots may be dropped in a reserve ballot box of the same variety. In that case, the two boxes must be opened simultaneously after the voting has ended and the envelopes they contain are counted together.

(2) It is forbidden to remove ballots, envelopes, and ballot boxes from the electoral premises.

(3) The members of the sectional electoral commissions, the observers, and the patrons must periodically check the voting booths for the availability of ballots for the lista of candidates, whenever the booths are unoccupied.

Article 70

(1) Voting using ballots and envelopes is based on a model approved by the president of the Republic of Bulgaria, as follows:

1. Ballots which contain the names of the candidates from the list of candidates in a multiple mandate district for the election of national representatives;

2. Ballots which contain the names of the candidates from the lists of candidates for the election of township council members;

3. Ballots containing the names of candidates for mayor of a township;

4. Ballots containing the names of the candidates for a mayor of a settlement.

(2) The individual types of ballots as per the preceding paragraph will be of different sizes.

Article 71

(1) Each party or coalition participates in the elections for national representatives, township council members, and mayors with one and the same color ballot in accordance with the registration. Independent candidates for national representatives, township council members, and mayors, nominated by initiative committees, participate in the elections with white ballots.

(2) The ballot must indicate the number of the electoral district and the name of the political party or coalition. The names of the candidates on the candidate list are listed one after another and are numbered sequentially.

(3) The colors of the ballots may be white, orange, blue, green, or red. If more colors are needed, white ballots with no more than three color stripes on the lower side of the ballot may be used. No combinations of the colors of the national flag are allowed.

Article 72

In case of major violations of the electoral process, the sectional electoral commission may decide to stop the voting until the violations have been eliminated. Such a decision must be reported immediately to the Central Electoral Commission.

Chapter 9. Determining Electoral Results

Article 73

(1) At the end of election day, the chairman of the sectional electoral commission proclaims the polls closed. The unused envelopes and ballots are packaged and sealed, then the ballot box is opened.

(2) The first to be opened are ballot boxes for the election of national representatives; the number of ballots they contain are counted; a record concerning the election of national representataives is created and signed. This is followed by the opening of ballot boxes for the election of township council members and mayors, in accordance with the procedure stipulated in the opening sentence of this paragraph.

Article 74

Representatives of the parties, coalitions, and candidates for national representatives and their patrons, observers, and journalists may be present at the opening of the ballot boxes and during the determination of the results of balloting.

Article 75

(1) The sectional electoral commission checks the number of envelopes in the box against the number of voters on the voter list and enters the results in the record. It then opens the envelopes and separates the valid ballots by candidate list or by candidate and sets aside invalid ballots and empty envelopes.

(2) Should the sectional electoral commission notice that a single envelope contains one or several invalid ballots, it replaces them in the envelope and notes their type and number in the respective list.

(3) A separate list is drawn up for the invalid ballots and empty envelopes. The list becomes an intrinsic part of the respective record and must be signed by the members of the sectional electoral commission.

(4) The opening of the envelopes and the counting of the ballots is done exclusively by the chairman or by another member of the sectional electoral commission authorized by the commission.

Article 76

(1) A ballot is judged invalid in the following cases:

1. It has been dropped in the ballot box without an envelope;

2. More than one ballot for different candidate lists has been placed in the envelope. Such ballots are listed as one invalid ballot;

3. The ballots are hand-made.

(2) Any argument on the validity of a ballot must be settled by the commission. Any member of the commission may make remarks and voice objections on the resolution which are entered in the commission's record. The resolution is noted in the record.

(3) If the ballot box for the election of national representatives contains an envelope which also includes ballots for the election of township council members and mayors, such ballots are destroyed; it is considered that the envelope has contained only the ballot for the election of national representatives. The number and type of the destroyed ballots are entered in the record. If the envelope does not contain any ballot for the election of a national representative, it is considered void.

(4) If the ballot box for the election of township council members and mayors contains an envelope which includes ballots for the election of national representatives, such ballots are destroyed and it is accepted that the envelope contains exclusively ballots for the election of township council members and mayors. The number and type of the destroyed ballots are entered in the record. If the envelope does not include ballots for the election of township council members and mayor, it is considered void.

(5) If the envelope contains ballots for township council members without a ballot for mayor or vice-versa, the envelope is considered empty with respect to the missing ballot.

(6) If more than one ballot of the same type for different candidate lists is found in an envelope, such ballots are considered one invalid ballot. The description in the record notes the total number of such ballots.

(7) Empty envelopes are considered invalid ballots.

Article 77

(1) If an envelope contains two or more identical ballots of the same type, they shall be counted as one. The additional ballots will be set aside and invalidated by the signature of the commission's chairman, and an explanation will be made in the record.

(2) If the ballot in the envelope contains the names of candidates inconsistent with the names of those registered in the district, it is considered valid and is counted as a vote for the corresponding list in the district in which the color of the ballot was registered. This applies to any other deviations of the ballots from the established model (such as a shade in the coloring, or misprints), resulting from production errors.

Article 78

Changes in the sequential listing of the candidates by the voter, no matter what means he used, will not invalidate the ballot. The sequence on the ballot will not be changed.

Article 79

Personally written words or signs drawn on the ballot, additionally entered names by the voter, mishandling of the ballots, dirtying the ballots, or deletions do not make a ballot invalid.

Article 80

The sectional electoral commission draws up four separate records on the voting:

1. For the election of national representatives;

2. For the election of township council members;

3. For the election of a township mayor;

4. For the election of a settlement mayor.

Article 81

(1) The records are drawn up in three copies each.

(2) The records contain the following:

1. The number of the electoral section and the name of the township;

2. The hours at which the voting began and ended;

3. The number of voters based on the overall voter list;

4. The number of voters based on the additional voter list;

5. The number of registered electoral lists;

6. The number of voters who have voted, based on the check marks on the voter list;

7. The number of voters according to the number of envelopes dropped in the ballot box;

8. The number of valid ballots for each candidate or electoral list;

9. The number of invalid ballots;

10. The number of destroyed ballots as per Article 76, paragraph 3, or paragraph 4;

11. The number of empty envelopes;

12. Submitted statements, objections and complaints and resolutions regarding the same;

13. The atmosphere in which the voting took place.

(3) The data for items 3-11 of the preceding paragraph are recorded in words and figures.

(4) The records must be signed by all members of the commission on each page. After the final signing of the records by the commission members, the commission chairman announces the results of the vote. The result of the elections is based on the number of valid ballots cast for each candidate or electoral list.

(5) Corrections in the records after they have been signed by all members of the electoral commission may be made only before the results of the elections have been announced by the respective electoral commission. Any correction must be signed again by all members of the commission and the word "corrections" must be written in the margin. Corrections and strikeouts are allowed only after the records have been signed by all members of the commission. Obvious factual errors may be corrected also after the electoral results have been announced.

(6) The members of the electoral commissions may not refuse to sign the records. Should they disagree with their content, they may express their own separate opinions, giving their reasons.

(7) Any party, coalition, independent candidate, or their patrons may be issued excerpts of the records with the results of the vote, based on a stipulated model. The same right is granted to observers present in the electoral section. An excerpt of the records is placed in a clearly visible place outside the electoral section.

Article 82

(1) The chairman of the sectional electoral commission submits:

1. Two copies of the records for the election of national representatives to the respective district electoral commission; the first copy goes to the Central Electoral Commission and the second to the district electoral commission;

2. Two copies of the records for the election of township council members and mayors to the township electoral commission; the first copy goes to the Central Electoral Commission and the second is retained by the township electoral commission;

3. One copy each of all records to the provisional executive committee or the provisional administration where the election was held.

(2) One copy each of the records for the election of national representatives, township council members, and mayors, along with all electoral ballots, separating the valid from the invalid, as well as the envelopes used for casting the ballots and other materials of the elections, is sent to the respective township council where the materials are kept until the next election.

(3) Transportation and delivery of the records and the other election documents is carried out by the chairman or the deputy chairman and at least two members of the electoral commission.

Article 83

(1) The district electoral commission in a multiple-mandate electoral district for the election of national representatives determines the results of the balloting on the basis of the records drawn up by the sectional electoral commissions, and makes them public.

(2) The township electoral commission determines the results of the voting for township council members on the basis of the records of the sectional electoral commissions, and makes them public.

(3) The township electoral commission determines the results of the elections for mayors on the basis of the records of the sectional electoral commissions, and makes them public.

Article 84

(1) The district electoral commission in a multiple-mandate electoral district for the election of national representatives draws up records in two copies on the results of the voting in the district, signed by the commission members.

(2) The records indicate the number of:

1. Sectional electoral commissions;

2. Sectional electoral commissions which have submitted voting minutes;

3. Voters in the electoral district, in accordance with the voter list;

4. Registered election lists;

5. Voters who have voted, based on the check-off marks on the voter list;

6. Voters who have voted on the basis of the number of envelopes cast in the ballot box;

7. Valid ballots for each separate list of candidates;

8. Invalid ballots;

9. Empty envelopes;

10. Submitted petitions, objections, and complaints, and decisions made concerning them.

(3) The data of items 3-9 of the preceding paragraph must be entered in words and figures.

Article 85

(1) The chairman of the district electoral commission submits one copy each of the records to the Central Electoral Commission and the respective township council.

(2) Together with the records, the first copy of the records of the sectional electoral commissions is also submitted to the Central Electoral Commission.

(3) Together with the records the second copy of the records of the sectional electoral commissions, the voter lists, the ballots, and other election-related documents received from the sectional electoral commissions are submitted to the township council.

(4) The transportation and delivery of the records and the other electoral documents is carried out by the chairman or the deputy chairman and at least two members of the electoral commission.

Article 86

(Amended D.V. No. 70, 1991)

(1) The determination of the results of the election for national representatives, registered by parties and coalitions, is made by the Central Electoral Commission, based on the D'Hondt method, and the Method for Computing the Results of Voting in Accordance With the Proportional Electoral System (D.V., No. 46, 1990).

(2) The right to participate in the allocation of seats is granted to the parties and coalitions that have obtained at least 4 percent of all valid votes for the country at large in the election for national representatives.

(3) The restriction stipulated in the preceding paragraph does not apply to independent candidates for the National Assembly.

Article 86a

(New, D.V. No. 70, 1991)

(1) An independent candidate for the National Assembly, registered in a separate electoral list, is considered elected if he has garnered valid votes equal to or exceeding the district's electoral quota.

(2) The district electoral quota is determined by dividing the overall number of valid votes cast in the respective multiple-mandate electoral district by the number of allocated mandates for this district.

Article 87

(1) On the basis of the records of the sectional electoral commissions, the township electoral commission draws up three different records:

1. For the election of township council members;

2. For the election of the mayor of the township;

3. For the election of mayors of settlements.

(2) The records must indicate the number of:

1. Sectional electoral commissions;

2. Sectional electoral commissions which have submitted records on the voting;

3. Voters in the township or the settlement based on the voter list;

4. Registered candidate lists and, respectively, lists for mayoral candidates;

5. Voters who have voted, based on the check marks on the voter list;

6. Number of envelopes dropped in the ballot box;

7. Valid ballots cast for each candidate list or candidate for mayor;

8. Total number of valid ballots cast for all mayoral candidates;

9. Invalid ballots;

10. Empty envelopes;

11. Filed declarations, objections and complaints, and resolutions passed on them.

(3) The data for items 3-10 of the preceding paragraph must be entered in words and figures.

(4) The records must be drafted in two copies each.

(5) One copy of the records for the election of township council members and, respectively, records for the election of the mayor of the community must be sent to the Central Electoral Commission. A copy of the records for the election of township council members, for the mayor of the township, and for the mayor of the settlement, together with the electoral documents, must be sent to the township council.

Article 88

For a fee, parties, coalitions, and independent candidates who have participated in the election have the right to obtain xeroxed copies of the records of the sectional, district, and township electoral commissions from the services in charge of keeping such documents.

Article 89

Each candidate list is given seats in the township council in proportion to the valid votes cast for it, based on the D'Hondt method.

Article 90

(1) The vote for a mayor is considered valid if more than one-half of the voters in the respective district have voted.

(2) The mayoral candidate who has garnered more than one-half of the overall number of valid ballots is considered elected.

(3) If no mayoral candidate has obtained the necessary majority, the township electoral commission shall order an election to be held within one week on a nonworking day. The two candidates with the highest number of votes will take part in the second round of the election.

(4) If only one candidate for mayor has been registered and has not been elected, the nomination of a second candidate for the second round is allowed.

(5) In the cases stipulated in paragraphs 3 and 4, the mayoral candidate who has garnered the highest number of votes shall be considered elected.

Article 91

(1) If less than one-half of the voters in the respective district participated in the mayoral elections, the township electoral commission sets a new election day to be held within one week on a nonworking day.

(2) The township electoral commission sets the new election day in a resolution that is made public.

(3) The stipulations of paragraphs 2, 3, 4, and 5 of the preceding article apply in the holding of this election.

(4) If less than one-half of the voters in the district in question participate in the new election, the candidate who obtains the highest number of votes is considered elected.

Article 92

(New D.V. No. 70, 1991)

(1) If a candidate for national representative, registered by a party or coalition, has been elected in more than one district's electoral list, he must inform the Central Electoral Commission within one day on which list he chooses to be elected.

(2) In the case stipulated in paragraph 1, the Central Electoral Commission will proclaim as elected the next candidate in the respective electoral list.

(3) An independent candidate for national representative, who has been elected in two multiple-mandate electoral districts, has the same obligation as the candidate described in paragraph 1.

Article 93

(Old Article 92, D.V. No. 70, 1991)

(1) The Central Electoral Commission shall publish in DURZHAVEN VESTNIK the electoral results for national representatives immediately after they have been announced.

(2) The Central Electoral Commission shall also publish the results of the vote by electoral section for national representative for the entire country in a special bulletin.

(3) After the end of the election and the resolution of controversies related to it, the Central Electoral Commission shall transfer the election materials to the archives of the National Assembly.

Article 94

(1) Any candidate for the National Assembly, as well as the central managements of the political parties or coalitions which took part in the elections for national representatives, may dispute the legality of the choice of a national representative to the Constitutional Court via the authorities stipulated in Article 150, paragraph 1, of the Constitution, within one month of the announcement of the results by the Central Electoral Commission.

(2) Any candidate for township council member and mayor and the local leaderships of political parties and coalitions that participated in the elections for township council members and mayors may appeal the decisions on the electoral results to the okrug or, respectively, the Sofia City court within two weeks from their publication; the court rulings may not be appealed.

Article 95

The newly elected national representatives, township council members, and mayors must make public within one month after the elections to the National Assembly or, respectively, the township council, the sources of their financing and their expenditures incurred during the electoral campaign.

Chapter 10. Termination of Mandate

Article 96

(1) If the mandate of a national representative is terminated before the expiring of his term, the Central Electoral Commission declares the next candidate on the respective list to be the national representatiave.

(2) If a national representative is appointed minister, he is replaced by the next candidate in the electoral list for the duration of his ministerial functions.

Article 97

The mandate of a national representative is terminated ahead of schedule under the circumstances stipulated in Article 72 of the Constitution.

Article 98

The mandate of a township council member or mayor is terminated ahead of schedule in the following cases:

1. Resignation;

2. Enactment of a court sentence of imprisonment for a malicious crime or if the prison sentence has not been postponed;

3. Change of residence outside the district for which he was elected. Changes in residence are established by the respective township council;

4. Permanent incapacitation or systematic failure to carry out obligations for more than one year;

5. Death.

Article 99

In cases of termination of the mandate of a township council member, the township electoral commission proclaims the next candidate on the list to be the township council member.

Chapter 11. By-Elections

Article 100

(1) If the position of mayor becomes vacant, the township electoral commission must schedule new a election within one month.

(2) In the cases as per paragraph 1, an election is not necessary if the term of office of the vacant mandate is less than six months.

Article 101

By-elections for mayor are held in accordance with the general procedure, while observing the stipulations of this law and the following changes:

1. An election must be scheduled no later than one month before election day;

2. The electoral lists must be made public no later than 20 days before election day;

3. The candidates must register within 15 days and their names made public no later than 10 days before election day;

4. The electoral sections must be formed no later than 25 days before election day. The same amount of time applies for the sectional electoral commissions;

5. The voting may close before 1900 hours if all voters have already voted.

Administrative and Penal Stipulations

Article 102

(1) Violations of the stipulations of this law are punishable by a fine of 50 to 500 leva unless the act constitutes a crime.

(2) The fine for violations as per Article 69, paragraph 2, and Article 81, paragraph 5, is 500 to 2,000 leva unless the action constitutes a crime.

(3) An official, in the sense of this law, who commits a deliberate violation as per paragraph 1, may be fined from 100 to 1,000 leva; as per paragraph 2, from 1,000 to 3,000 leva, unless the violation is a crime.

Article 103

(1) The reports on noted administrative violations must be drafter by the chairmen of township and district electoral commissions.

(2) Penal resolutions are issued by the chairmen of the provisional executive committees or, respectively, the township mayors. The drafting of the reports, the promulgation of penal resolutions, and their appeal are based on the procedures stipulated in the Law on Administrative Violations and Penalties.

Interim and Additional Provisions

Section 1. The application of the D'Hondt method in determining the electoral results as per Article 88 is based on a special instruction issued by the Central Electoral Commission.

Section 2. In the sense of this law, settlements are inhabited places with mayoralties.

Section 3. In the sense of this law, the following are classified as observers:

1. Representatives of parliaments of countries that are members of the Conference on Security and Cooperation in Europe, of the Parliamentary Assembly of the Council of Europe, of the European Parliament, and other organizations related to the observance of human rights who are invited under the auspices of the Ministry of Foreign Affairs;

2. Representatives of foreign political parties and movements as well as private individuals invited by political parties and coalitions which have been registered for participation in the elections under the auspices of the Ministry of Foreign Affairs;

3. Authorized members of the Bulgarian Association for Free Elections and the Citizens Initiative for Free and Democratic Elections. Section 4. (1) Bulgarian citizens who reside or have spent more than one year abroad will prove their identity with their passport. They must submit statements to the effect that they have no identity card.

(2) Bulgarian citizens who have spent more than two months abroad and who have not returned on election day are deleted from the voter lists in the country.

Section 5. (1) Conscripts in the Armed Forces may not be candidates for the National Assembly, township council members, or mayors.

(2) Military servicemen other than those stipulated in the preceding paragraph may be candidates for national representatives, township council members, or mayors; they will run as independent candidates.

Section 6. If the provisional executive committees have not appointed officials as per Article 9 of this law, the voter lists must be signed by the existing members only.

Section 7. The provisional executive committees of townships in Sofia will continue to perform their functions until new authorities have been set up, but for no more than two months after the election.

Concluding Provisions

Section 8. The present law rescinds the provisions of the electoral law (published D.V. No. 54, 1973; amended No. 61, 1973; amended and supplemented No. 88, 1973; No. 22, 1976; and No. 97, 1978; amended No. 98, 1978, amended No. 91, 1982 and No. 98, 1987) in the sections pertaining to electing and recalling people's council members, people's representatives, and mayors.

Section 9. The present law becomes valid as of the day of its publication in DURZHAVEN VESTNIK.

The present law was passed by the Grand National Assembly on 20 August 1991 and stamped with the state seal.

Grand National Assembly Chairman: Nikolay Todorov

Regulation for Land Council, Local Land Commissions

91BA0978A Sofia OTECHESTVEN VESTNIK (supplement) in Bulgarian 2 Aug 91 pp 12-16

["Regulation on the Organization and Activities of the National Land Council and Municipal Land Commissions"]

[Text]

Chapter 1

General Stipulations

Article 1. The work of the National Land Council (NPS) and the Municipal Land Commissions (ObPK) is organized in accordance with the functions and tasks stipulated in the Law on the Ownership and Utilization of Farmland (ZSPZZ) and the regulation governing its application (PPZSPZZ).

Article 2. The National Land Council is an agency of the Council of Ministers. It guides activities related to the implementation of the policy of the state in the area of land reform and the conservation, improvement and efficient utilization of the country's soil resources.

Chapter 2

Section I. National Land Council

Article 3. The National Land Council consists of a chairman, two deputy chairmen, a secretary, and members. It holds plenary meetings no less than once monthly.

Article 4. The NPS establishes its own internal structures, areas of activity, expert and regional expert councils, and determines their functions and tables of organization in accordance with its budget.

Article 5. (1) The NPS organizes its activities and the activities of the municipal land commissions for the implementation of the ZSPZZ and the regulation on its application.

(2) Formulates and approves written instructions and stipulations on the application of the law and other legal acts.

(3) Resolves arguments between state organizations and among state and other organizations, as well as among labor cooperative farms, and other disputes relative to the utilization of the land belonging to the State Land Fund, as stipulated in the Law on the Ownership and Utilization of Farmland.

Article 6. The NPS sessions are valid if no less than one-half plus one of its members are present. The sessions may be attended also by experts, who have participated in drafting the materials for the agenda and, if necessary, by other specialists.

Article 7. Discussions based on the agenda and the resolutions which are adopted are recorded in minutes which must be signed by the chairman or his deputy and the NPS secretary. Resolutions are passed in open vote and by simple majority of those attending the session.

Article 8. The NPS chairman:

1. Guides the overall activities of the NPS and of the Municipal Land Commissions;

2. Ratifies written instructions received from the NPS leadership and supervises their execution;

3. Periodically informs the Council of Ministers on the course of the land reform. If necessary, submits legal documents for approval by the Council of Ministers;

4. Represents the NPS in dealing with all state and public organizations;

5. Assigns within the country and abroad experts and other specialists to carry out assignments related to the work of the NPS.

Article 9. The deputy chairmen and secretaries of the NPS coordinate activities in their areas and substitute for the chairman in his absence.

Article 10. (1) The regular NPS personnel engage in activities defined in the description of their duties. Their positions, for which they must compete, are defined by the NPS chairman.

(2) NPS experts must mandatorily have higher training and eight years of practical experience in their field.

Article 11. (1) The specific list of the individuals who must attend the sessions of the Central Expert Council must be determined by the NPS chairman for each individual session, depending on the nature of problems under consideration.

(2) The chairman, the deputy chairmen and the secretary of the NPS are ex officio members of the Central Expert Council.

Article 12. The NPS sets up specialized groups for the resolution of legal disputes. They are subject to a special jurisdiction and their membership is determined by the NPS chairman.

Section II. Municipal and Mayoral Land Commissions

Article 13. (1) Land commissions are set up under the ObNS. In cities with municipal divisions, the executive committee of the city people's council determines the municipalities under which land commissions are set up.

(2) The ObNS creates, if necessary, mayoral land commissions under one mayoralty or a group of mayoralties, based on the following criteria:

a. Size of the farmland;

b. Number of owners;

c. Number of settlements.

(3) The mayoral land commissions have the same authority as the ObPK.

(4) The funds of maintaining the land commissions are supplied by the ObNS and from assets collected as per Article 65 of the PPZSPZZ.

Article 14. (1) The ObPK consists of a chairman, secretary and the following members: a jurist, an agronomist or an agroeconomist, a geologist, a land planner, and representatives of private farmers and cooperative farms.

(2) The size of the personnel, including the temporary members of the ObPK, is set by the NPS with the agreement of the Ministry of Finance.

(3) The ObPK chairman, secretary and specialists are appointed by the chairman of the ObNS Executive Committee coordinated with the NPS.

(4) The representative of the cooperative farms is elected at the meeting of authorized representatives of their managements; the representative of the private farmers is elected at their general meeting. Records are kept on their election.

Article 15. (1) The remuneration of the full-time members of the land commissions must be consistent with existing regulations on the payment for labor and within the ObNS budget limits, and coordinated with the NPS.

(2) The other members receive their remuneration on the basis of a civil contract, based on the work done and the regulations governing payments for labor.

(3) If the chairman or the secretary is a specialist, no full-time other member possessing the same skill is appointed.

Article 16. The Municipal Land Commission:

1. Accepts declarations by citizens for the restoration of ownership rights—forms Nos. 1 and 2;

2. Informs in the municipality, the mayoralty, or in any other suitable place the receipt of declarations including the data they provide;

3. Accepts complaints and objections concerning ownership rights or the use of farmland and informs the interested parties in writing in accordance with GPK procedures the objections to be considered by the PNS or by the courts;

4. Provides the initial data and assigns and contracts for work for the drafting of land division plans and their actual implementation;

5. Resolves disputes as per item 3, paragraph 2, of the provisional and concluding stipulations of the ZSPZZ;

6. Issues opinions and makes decisions on problems mentioned in this regulation;

7. Participates in the commissions for the identification of area boundaries and the boundaries of farmland with representatives of the forest fund and the settlements;

8. Issues opinions on proposals relative to granting or expropriating land in accordance with the procedure stipulated in the special law;

9. Supervises the efficient use of the land by private farmers, the municipality, the state and cooperative organizations, and other juridical persons, as well as the land of the State Land Fund;

10. Supplies periodical information on its work as requested by the NPS.

Article 17. The ObPK drafts special minutes with resolutions on the following:

1. Establishing the coefficient to be used in the reduction of the size of farmland in the area—form No. 3;

2. Equalizing the category of the land in the establishment of the TKZS [Labor Cooperative Farms] and the DZS [State Farms] with the land categories as per the cadaster, their correlation and value, with a view to restoring the land to its owners in accordance with its quality—form No. 4;

3. Determining the size and category of farmland to which the petitioner is entitled—form No. 5;

4. Restoring land ownership to the owners—forms Nos. 6 and 7;

5. Restoring land ownership to the municipality and the lands of juridical persons—form No. 8;

6. Approving the plan for the division of the land, after coordination with the NPS and in accordance with the opinion of the regional expert councils—form No. 9;

7. Adding land to the municipal or state land fund—form No. 10;

8. Giving land to citizens with little or no property from lands belonging to the municipal or state land fund—form No. 11.

Article 18. The chairman of the land commission:

1. Is responsible for the overall work of the commission for the implementation of the ZSPZZ, the PPZSPZZ and the obligations based on this regulation, for the respective territory;

2. Represents the commission in dealing with all authorities;

3. Ensures the prompt resolution of problems arising in the course of the correspondence and the complaints he has received;

4. Convenes and chairs the meetings of the land commission;

5. Reports on the work of the land commission to the NPS;

6. Manages the work of the regular personnel and the commission's budget.

Article 19. The land commission secretary substitutes for the chairman and assumes his functions in the latter's absence.

Article 20. (1) The meetings of the ObPK are considered valid if no less than one-half plus one of the commission's members are attending. Decisions are passed with open vote and simple majority of those present.

(2) The minutes with their resolution must be signed by all attending ObPK members; separate views are recorded after the signatures and become part of the minutes.

Chapter 3

Section I. Bookkeeping

Article 21. (1) Documents received by the NPS and the ObPK are classified in files for which the following records are kept:

1. Incoming and outgoing register, on forms Nos. 12 and 13;

2. Alphabetical index on opened files, separately for petitions and complaints objecting to the decisions of the NPS and the ObPK;

3. A book listing existing files, on the basis of which the NPS and the ObPK issue their resolutions;

4. Book on closed sessions at which the petitions are considered;

5. An archive book on completed correspondence and cases filed;

6. Manuals on receiving and returning communications;

7. Book on complaints and claims by citizens;

8. Diary in which activities on the formulation of land division plans are recorded.

(2) All record books must be numbered, bound, sealed and certified with the chairman's signature.

Article 22. (1) Received documents on which files are started are recorded in the incoming register. Letters containing complaints by citizens, questions, and things of that kind have only the date of reception recorded and are kept in separate office files.

(2) In the case of correspondence pertaining to the same matter the register of incoming documents includes only the first letter; a note is added in the proper column of the register indicating the date at which subsequent letters were received.

(3) The envelope with the stamps and the post office seal are filed in the case of papers received by mail, and with deadlines.

Article 23. The outgoing register includes all papers which have been taken out of the NPS and the land commission for a variety of reasons; they are given an outgoing number and date.

Article 24. The numbering of the incoming and outgoing register is for the individual years. All outgoing papers must be signed by the chairman or his deputy and by the secretary, with the exception of communications which are signed by the session secretary only.

Section II. Review and Resolution of Correspondence by the National Land Council and the Land Commissions

Article 25. The correspondence related to the consideration of disputes on which the NPS and the ObPK must issue a ruling is originated with a written request by the interested citizen, the municipality, the cooperative or other juridical persons.

Article 26. (1) The written petition must include the following:

a. The first and last name and patronymic, the EGN [Uniform Civil Number] and the address of the center;

b. The precise name and address of the organization if the petition is filed by a juridical person and the name of the organization against which the petition was filed;

c. Description of the controversy;

d. Precise formulation of the claim.

(2) The following must accompany the petition:

a. Written proof in support of the claim;

b. Written request addressed to the other organization for voluntary settlement of the dispute;

c. Document certifying that a copy of the written request has been sent to the other party.

(3) The chairman or his deputy checks the regularity of the petition and determines the subsequent procedures.

Article 27. In order to determine the nature of the dispute from the factual and legal aspects, the NPS and the ObPK have the right to:

1. Request additional information from the parties to the dispute;

2. Gather independently other written proof;

3. Investigate matters on site;

4. Appoint experts and hear their reports.

Article 28. As an exception, and if deemed necessary, they may summon representatives of the opposing parties to provide additional information.

Article 29. Should anyone of the members have any interest in the dispute, he must disqualify himself. The membership must determine whether a disqualification is justified.

Article 30. In reviewing and resolving the matter, the NPS and the ObPK are guided by the rules, deadlines, and legal stipulations of the ZSPZZ and PPZSPZZ.

Article 31. (1) Having heard a report on the investigation and the conclusions of the experts, if such a conclusion has been submitted, the NPS and the ObPK review and resolve the matter at a closed session.

(2) The decision is made by open vote and simple majority of those present.

The minutes accompanying the resolution include a brief motivation and proofs on the basis of which the actual and legal status of the argument has been considered.

(3) A transcript of the minutes of the resolution, and information on the resolution and a time limit for the appeal, if it may be appealed, are issued to the interested parties and the parties to the case, indicating the time limit and the authority to which the resolution must be appealed.

(4) The day the communication has been received is determined by the signature of the recipient; should the latter refuse to accept it, the refusal must be documented with the signature of a witness.

Article 32. The concluded correspondence is filed and stored in the archives with strict security precautions.

Article 33. The filing and use of information materials generated in the course of the initiation and application of the stipulations of the ZSPZZ and the regulation on its application, as well as the individual administrative acts (resolutions) and the general stipulations are subject to greater security precautions.

Section III. Financing

Article 34. Within the framework of its allocated budget, the NPS may ratify a budget plan-account for the membership and the cost of the land commissions, including their ad hoc members.

Article 35. The specific organization of the financing and accountability of the NPS and the land commissions are based on an instruction coordinated with the Ministry of Finance.

The ObPK resolves financial problems stemming from the ZSPZZ and PPZSPZZ with funds granted by the NPS and collected as per Article 65 of the PPZSPZZ.

This regulation is issued on the basis of Article 32, Paragraph 2, of the Law on Ownership and Utilization of Farmland and was adopted with Resolution No. 2 of 12 July 1991 of the National Land Council.

Law on Protection of Competition

91BA0947A Sofia IKONOMICHESKI ZHIVOT in Bulgarian 29 May 91 pp 2-3

["Text" of Law on Protection of Competition]

[Text]

Chapter 1. General Stipulations

Subject

Article 1. (1) The purpose of this law is to ensure conditions for the freedom of enterprise in production, trade and services, the free setting of prices, and the protection of consumer interests.

(2) In order for the objectives of paragraph 1 to be implemented, the law provides for protection from abuses of monopoly on the market, disloyal competition, and other actions which could restrict competition in the country.

Commission for the Protection of Competition

Article 2. (1) A Commission for the Protection of Competition is being created as an independent budget-supported institution.

(2) The Commission for the Protection of Competition consists of a chairman, two deputy chairmen, and eight members, appointed by the National Assembly for a term of five years, and dismissed by it. One-half of the members of the Commission must be certified lawyers with no less than 10 years of experience in this field.

Chapter 2. Monopoly

Definition

Article 3. The situation of any individual in the national market constitutes a monopoly when he:

1. Who by virtue of this law is granted the exclusive right to engage in a certain type of economic activity (production, services, trade, brokerage, commodity purchases, credit, insurance, and others);

2. Who independently, or together with other dependent individuals, accounts for more than 35 percent of the market share of anyone of the activities indicated in item 1.

Prohibition of Holding a Monopoly

Article 4. State administration and municipal authorities may not make decisions that either expressly or silently establish a monopoly, or that in fact lead to such a monopoly, should this substantially restrict the freedom of competition or free price-setting.

Prohibition of Unification and Merger

Article 5. (1) Any unification, state of dependency, and merger of enterprises is forbidden if it leads to the consequences of Article 4.

(2) An enterprise in which another enterprise owns stock or shares that ensure the latter a majority in making of decisions, or which blocks the making of decisions, is considered a dependent enterprise.

(3) No dependent enterprise may acquire stocks or shares.

Information and Permission

Article 6. (1) Individuals holding a monopoly, as well as those who, through the purchase of shares and stocks become such, must inform in advance and in writing the Commission for the Protection of Competition on the acquisition of shares or stock in a competing enterprise with a status of subsidiary enterprise, as well as the decision to abstain from or restrict the expansion of production, sales, capital investments, or technological development.

(2) Activities or deals, as described in the preceding paragraph, may take place by permission of the Commission for the Protection of Competition, or if the Commission does not oppose the action within 30 days, after it has been informed.

Ban on the Abuse of Monopoly

Article 7. An abusive monopoly occurs when the person, as described in Article 3, engages in actions which restrict competition or harm the interests of consumers, by:

1. Creating difficulties for other individuals to engage in economic activities and limiting the development of the market or access to the market.

2. Applying a blatantly unequal approach to the various cocontractors, or else unequal contractual conditions, including groundless restrictions or increased responsibilities, providing goods and services at a quality below that of standard market requirements.

3. Creating a scarcity of goods and services by hoarding, destroying, or damaging them, requiring unnecessary processing, purchasing goods from the competition, and other similar actions.

4. Making the conclusion or execution of a contract dependent on the other side's acceptance of additional conditions which, in terms of their nature, are unrelated to the object of the contract or its implementation.

5. Using economic coercion leading to the termination, separation, merger, or reorganization of other companies.

6. Imposing monopoly prices which significantly exceed the cost of production and marketing of goods and services over a lengthy period of time.

Chapter 3. Prohibiting the Restriction of Competition

Prohibited Agreements and Decisions

Article 8. (1) Agreements (cartels) as well as resolutions passed by companies, economic groups, associations, or individuals stipulating the specific or silent establishment of a monopoly in the country, or that actually lead to such a monopoly are invalid.

(2) Contractual stipulations which restrict either side in its choice of markets, supply sources, purchasers, sellers, or consumers are forbidden, unless the restriction is based on the nature of the contract and does not harm the interests of the consumers.

Control Over Market Agreements

Article 9. By permission of the Commission for the Protection of Competition, agreements may be concluded on the application of standardized conditions in contracts for sale, manufacturing, services, transportation, credit, payments, and others, providing that they do not affect the free contracting of prices, do not limit competition, and do not harm consumer interests.

Assumption of Exclusive Commercial Rights

Article 10. It is forbidden for a person to sign a contract for representation or assumption of exclusive rights as a broker, purchaser, or seller of goods and services:

1. with competitors, should this lead to the restriction of competition in the country or the establishment of a monopoly;

2. if a contracting party has a monopoly in production, consumption, or trade.

Chapter 4. Disloyal Competition

Prohibition

Article 11. Disloyal competition is forbidden.

Actions That Constitute Disloyal Competition

Article 12. (1) Disloyal competition implies any action or behavior in the conduct of economic activities which conflicts with conscientious commercial practices and harms or could harm the interests of competitors in relations among them or in their relations with consumers.

(2) Specifically, disloyal competition means the following:

1. Damaging the good reputation of, and the trust in competitors and the goods and services they offer, or their credit reliability, by alleging or disseminating erroneous facts or depicting accurate facts in a distorted fashion;

2. Ascribing through advertising or any other means nonexistent qualities to goods and services compared with the goods and services of competitors, or ascribing nonexistent shortcomings to goods and services offered by competitors;

3. Not mentioning or concealing substantial shortcomings or dangerous properties of offered goods and services;

4. Misleading consumers about essential properties or means of utilization of goods by claiming erroneous facts or else providing accurate facts in a misleading fashion;

5. Offering or advertising goods and services whose appearance, packaging, labeling, naming, or any other features could mislead or could lead the consumers to be misled concerning the origin, the producer, the seller, the means and place of production, the source and means of acquisition, the quantity, quality, nature, consumer properties, and other essential features of the commodity or the service;

6. Making use of a foreign company, trademark, or any specific marking or symbol of another person in a way which could mislead the consumer;

7. Making use of indications which could create erroneous belief of nonexistent qualities found in goods and services;

8. Advertising goods and services which are not available in terms of satisfying consumer demand, or are available in insufficient amounts or varieties;

9. Misleading reports on prices, price reductions, or other favorable commercial conditions in offering goods and services;

10. Nonfulfillment or unilateral termination of a contract with a view to concluding a similar contract with other individuals, thus worsening the competitive opportunities of the other side;

11. Using coercion or other illegal methods for influencing consumers, with a view to their purchase or use of a given commodity or service;

12. Providing incomplete or wrong data concerning the essential elements of the contract for credit or term payments.

Prohibiting Any Misleading Action Leading to the Termination or Violation of the Contract

Article 13. Actions as described in Article 12, aimed at attracting customers, as a result of which contracts signed with competitors are terminated or violated, are prohibited.

Prohibition of Making Production or Trade Secrets Public Knowledge

Article 14. (1) Also considered disloyal competition is finding, using, or making public the production or trade secrets of others, in violation of conscientious commercial practices.

(2) A production or trade secret means the decisions and data related to economic activities, the finding, use, or publication of information that could harm the economic interests of the legitimate owner.

(3) Information concerning someone else's production or trade secrets conflicts with conscientious commercial practices also when this occurs by overhearing, penetration of premises, opening mail, photographing, or studying without the agreement of the owner papers or materials kept in a way that restricts access to them, as well as fraud or offering benefits to individuals who have access to the secret by virtue of their official or contractual relations.

(4) Making use or publishing other people's production or trade secrets is forbidden also when such secrets have been found or reported under condition that they will not be used or publicized.

(5) The personnel of all enterprises and organizations and state authorities must protect production or trade secrets that became known to them officially, for a

period of five years after the termination of labor relations, unless the labor or any other contract stipulates a longer period of time.

Disloyal Competition by Employees

Article 15. (1) Individuals are forbidden to participate at the same time, and up to three years after their dismissal, in management or controlling bodies of competing enterprises.

(2) Individuals who maintain legal labor relations may not, without the agreement of their employer, engage in economic activities at their own or someone else's account within the range of the activities of the employer. It is considered that an agreement has been given if in signing the labor contract the employer knew that the individual is engaged in such activities and no specific stipulation concerning their termination was agreed upon. If this prohibition is violated, the employer may terminate the labor contract without advance notification.

(3) Individuals, as per the preceding paragraph, may not engage in competitive activities affecting their employer for three years after the termination of the labor contract, unless the contract stipulates otherwise.

(4) An official may not participate in an enterprise or be a member of the administrative or supervisory body of an enterprise if this could violate the conscientious exercise of his official obligations.

Chapter 5. State Influence Against the Establishment and Abuse of a Monopoly and Disloyal Competition

Setting Mandatory Prices

Article 16. In cases of abuse of the monopoly, at the suggestion of the Commission for the Defense of Competition the Council of Ministers or any authority assigned by it may set maximal or minimal prices which are mandatory for the person holding a monopoly.

Import and Export Quotas

Article 17. If quotas have been set for importing or exporting certain types of goods and services, the authority monitoring their observation must make them public, ensuring for the interested equal competitors conditions for participation in the competition for the allocation of the quotas.

Authority of the Commission for the Protection of Competition

Article 18. The Commission for the Protection of Competition:

1. Suggests, in accordance with proper procedures, the deletion of administrative acts issued by state administration authorities in violation of this law;

2. Demands through the courts the imposition of fines in cases of illegal establishment or abuse of a monopoly, disloyal competition and restriction of competition.

Appeals

Article 19. Decisions of the Commission on the Protection of Competition as described in Article 6, paragraph 2, and Article 9, may be appealed to the Sofia City Court within one month of their announcement. Should the Commission fail to issue permission within one month after the request has been filed as described in Article 9, a refusal will be assumed.

Obligation To Assist

Article 20. Officials in enterprises and administrative authorities must, by request of the Commission for the Protection of Competition, submit required information and documents and written opinions on problems within the range of the Commission's jurisdiction.

Chapter 6. Liability

Claims

Article 21. (1) The following claims may be filed with the court in cases of violation of prohibitions or restrictions as per the present law, depending on the nature of the violation, by the following:

1. Individuals whose interests have been affected or threatened by the violation;

2. The Commission for Protection of Competition and the okrug prosecutor.

(2) The court may:

1. Rule that a violation has been committed;

2. Resolve that economic activities are terminated until the violation has been stopped;

3. Rule on the invalidity of deals or decisions which violate the law;

4. Order the violators to end the violation.

(3) The court may stipulate the confiscation in favor of the state of profits earned in violation of this law.

(4) No state fee is required in filing claims as per paragraph 1. The fee is set at the conclusion of the case, in accordance with the stipulations of the Civil Procedure Code.

Suability

Article 22. Claims filed as described in Article 21 are under the jurisdiction of the okrug courts.

Property Penalties

Article 23. (1) Fines ranging from 5,000 to 250,000 leva may be levied on companies and enterprises for violations described in Articles 4, 5, and 7, items 1, 2, and 5, and Articles 10 and 13, as well as for the commission of deeds described in Article 9 without permission.

(2) Fines may be imposed from 20,000 to 1 million leva in the following cases:

1. If violations as per paragraph 1 have been committed repeatedly within a three-year period;

2. In the case of particularly grave violations as per paragraph 1, which have caused significant harm to the market, the consumers, or the national economy;

3. For violations described in Article 6, paragraph 1, items 4, 6, and 7; and Articles 8, 12, and 14, paragraphs 1-4;

4. For implementing agreements or decisions considered invalid, or else engaging in activities prohibited by court ruling.

(3) In minor cases as per paragraphs 1 and 2, items 1, 3, and 4, the fine may be from 500 to 5,000 leva.

Administrative-Penal Liability

Article 24. Individuals who have committed or allowed the commission of violations as per the present law may be fined up to 10,000 leva unless their action constitutes a crime.

Levying Property Penalties

Article 25. (1) In the case of violations entailing property penalties as described in Article 23, the authority of the Commission for the Protection of Competition draws up a document as per the Law on Administration Violations and Penalties, which is sent to the okrug court of the area where the crime was committed. If the crime has been committed in the area covered by two or more okrug courts, the document is sent to the Sofia City Court.

(2) The case trials, the rulings, and their appeal are based on the Civil Procedure Code.

(3) Proofs of violations as described in Article 24 and the promulgation, appeal and execution of penal resolutions are based on the Law on Administrative Violations and Penalties.

Provisional and Concluding Stipulations

1. In accordance with item 1 of Article 3, the Council of Ministers must submit within three months a draft law on the activities which may be carried out as monopolies within the scope of the national market.

2. The chairman of the Commission for the Protection of Competition shall approve a regulation on the structure and activities of the Commission for the Protection of Competition within one month of the enactment of the law.

3. The execution of this law is assigned to the Commission for Protection of Competition and the courts.

The present law was passed by the Grand National Assembly on 2 May 1991 and was stamped with the state seal.

For the chairman of the Grand National Assembly: Gin'o Ganev

Law on Cooperatives

91BA0977A Sofia OTECHESTVEN VESTNIK (supplement) in Bulgarian 2 Aug 91 pp 1-11

["Text" of Law on Cooperatives adopted by the Grand National Assembly on 19 July and signed by Nikolay Todorov, chairman of the Grand National Assembly]

[Text]

Ukase No. 236
of President of the Republic Zhelyu Zhelev
issued in Sofia on 29 July 1991
and sealed with the state seal

On the basis of Article 98, Paragraph 4 of the Constitution of the Republic of Bulgaria, I hereby decree that the Law on Cooperatives, adopted by the Grand National Assembly on 19 July 1991, be published in DURZHAVEN VESTNIK.

Chapter 1

General Stipulations

Article 1. Definition

(1) A cooperative is a voluntary association of physical persons, with variable capital and a variable number of members who, through mutual aid and cooperation, engage in economic and other activities in pursuit of their interests.

(2) The cooperative is a juridical entity.

Article 2. State Aid and Encouragement

The state assists and encourages cooperatives through tax, credit-interest, customs, and other economic incentives.

Chapter 2

The Cooperative

Section I

Founding

Article 3. Founding Procedure

(1) A cooperative may be founded by no less than seven able-bodied physical persons who decide to hold a constituent assembly. The constituent assembly adopts bylaws and elects an administrative and a control council.

(2) The bylaws must include the following:

1. The name, headquarters, and object of activities;

2. Conditions for accepting members, and their rights and obligations;

3. The officials of the cooperative and their rights;

4. Decisionmaking procedures;

5. The membership fee and share contribution;

6. Conditions and procedures for making a contribution in land;

7. Procedure for the distribution of the general income, profits and losses, funds and types of dividends, as well as rent payments for contributed land;

8. Procedures for disposing of the property of the cooperative;

9. Grounds and procedures for termination of membership.

(3) The bylaws may also settle other problems in as much as they have not been regulated by law.

(4) The minutes on the founding of the cooperative and the bylaws must be signed by the founders.

Article 4. Registration

The cooperative is registered with the okrug court where the head office is located, based on a written petition submitted by the administrative council. The petition must be accompanied by the following documents:

1. Transcript from the minutes of the constituent assembly and the bylaws;

2. Notarized samples of the signatures of the individuals who represent the cooperative;

3. Certificates of police records of the members of the administrative and control councils;

4. Statements by the members of the administrative and control councils to the effect that they are not married to one another or descended in a straight line and are not brothers and sisters.

Article 5. Establishment

The cooperative is established as of the day of registration of the court ruling in the ledger.

Article 6. Deletion

A cooperative that does not begin to function within one year from its registration shall be invalidated by the court by request of the prosecutor.

Article 7. Actions Prior to the Founding

Actions carried out on behalf of the cooperative prior to its establishment generate rights and obligations concerning the cooperative if the individuals who acted on its behalf were suitably authorized by the founders. In the absence of authorization, such individuals shall be jointly liable for the assumed obligations. If the cooperative is not registered, the other founders shall be jointly responsible unless they have issued an authorization.

Section II

Membership Rights and Obligations

Article 8. Membership

(1) Any citizen who accepts the bylaws of the cooperative and is 16 years of age or older, or, in the case of cooperative students, 15 years of age, may become a member of a cooperative.

(2) An individual may be a member of several cooperatives.

Article 9. Acceptance of New Members

(1) A new member of a cooperative is accepted on the basis of a petition submitted by the individual and by decision of the administrative council. The petition is considered at the first session of the administrative council subsequent to its receipt. On an exceptional basis, it may be considered at its second session as well, if the first session was held before 14 days from the time it was received.

(2) The decision of the administrative council must be approved by the general assembly.

(3) A request to rescind the refusal of the administrative council on the acceptance of a new member may be requested of the general assembly within 14 days of receipt of the written information. If the refusal has been rescinded, the candidate is considered accepted as of the day the resolution was passed by the general assembly.

(4) If the deadline described in the preceding paragraph has not been met or the refusal was confirmed by the general assembly, no less than one year must pass before a new petition for membership may be submitted.

(5) The accepted members are registered in the record of cooperative members.

Article 10. Membership Rights

(1) A member of a cooperative as the following rights:

1. To participate in its activities and to benefit from them;

2. To participate and vote in the general assembly as well as to be elected member of its management;

3. To demand explanations of its authorities for nonimplementation of adopted resolutions and request information on problems affecting his interests;

4. To request that illegal, antistatutory, and erroneous resolutions and actions of its officials be nullified;

5. To receive dividends;

6. To have his share participation refunded should he terminate his membership;

7. The right to social and health insurance in accordance with the law.

(2) In addition to the rights described in the preceding paragraph, the member of a cooperative who has contributed land has the following rights:

1. To retain ownership of the land within its actual borders or equivalent areas;

2. To retain the type of crops grown on the contributed land;

3. To sell to the members of the cooperative the contributed land;

4. To be paid rent for the contributed farmland;

5. To receive part of the rent or part of his labor remuneration in kind, in the form of farm produce.

(3) The member of a production cooperative has the right to obtain employment in the cooperative in accordance with his skills and age.

Article 11. Membership Obligations

(1) The member of a cooperative must observe the bylaws and implement the resolutions of the cooperative officials.

(2) Cooperative members under the legal age must make the payments stipulated by the law in accordance with the stipulations of the Law on Individuals and the Family.

Article 12. Labor Relations and Social Insurance

(1) Labor relations and the health and social insurance of people employed in a cooperative, who are not its members, are governed by the labor, health, and social legislation.

(2) Supervision over the observance of the labor, health, and social legislation in cooperatives is provided by a social activities commission that is elected by the general assembly.

Article 13. Discipline

(1) A member of a cooperative may be issued a reprimand and a warning of expulsion should he fail to fulfill his obligations.

(2) The reprimand and the expulsion warning must be issued by the administrative council.

Article 14. Termination of Membership

(1) Membership in a cooperative is terminated in the following cases:

1. Leaving the cooperative;

2. Transferring to another cooperative in accordance with the procedure stipulated in the bylaws;

3. Expulsion;

4. Death.

(2) Membership is also terminated if the cooperative is terminated by liquidation.

Article 15. Expulsion of Members

(1) A member of a cooperative may be expelled for gross violations of the law, the bylaws, or the resolutions of its officials.

(2) The administrative council of the cooperative may expel a member prior to the holding of the general assembly. The member of the cooperative is invited to be present at the time the decision is made.

Article 16. Property Regulations

(1) The contributed share is refunded to the former cooperative member or his heirs after the annual accountability report has been accepted.

(2) The amount of the refunded share remains the same unless otherwise stipulated by the bylaws.

(3) A former member of a cooperative who has contributed farmland and retained its ownership on corresponding parts of it, or else his heirs, will receive land of equal value in terms of quantity and quality.

(4) The statute of limitations for a refund of the share contribution is five years, and three years for receiving dividends.

Section III

Cooperative Authorities

I. General Assembly

Article 17. Structure and Authority

(1) The general assembly of the cooperative consists of all its members. In the case of a large membership, or should the activities of the cooperative extend to several settlements, it may be replaced by an assembly of representatives elected by secret ballot. Their number may not be less than 100. The assembly of representatives has all the rights of the general assembly.

(2) The general assembly:

1. Drafts, approves, amends, and supplements the bylaws;

2. Appoints and dismisses the chairman of the cooperative;

3. Determines the number of members of the administrative council and the control council and elects them by secret ballot;

4. Passes on the reports submitted by the administrative council on its annual activities, the balance sheet, and the distribution of the general income after being presented with the conclusion of the control council;

5. Approves the report of the control council;

6. Makes decisions on membership and termination of membership in cooperative associations and on the type of their activities;

7. Elects representatives to the general assembly (the congress) of the cooperative union of which the cooperative is a member;

8. Remits monetary obligations to the cooperative and postpones or reschedules their implementation;

9. Makes decisions on selling the cooperative's real estate;

10. Ratifies the decision of the administrative council on the acceptance of new members. In the case of nonratification, the membership is terminated as of the day of the meeting;

11. Expels members;

12. Makes decisions on the voluntary collection of additional and specific monetary contributions by the members;

13. Invalidates decisions and actions of other cooperative officials that conflict with the law or the bylaws or are irregular;

14. Makes decisions relative to the results of the financial audits of the cooperative;

15. Makes decisions on the restructuring and terminating of the cooperative and its liquidation.

(3) The general assembly discusses and makes decisions on all matters pertaining to the cooperative and its activities also when this is not expressly stipulated by the law or the bylaws.

Article 18. Summoning

(1) The general assembly is summoned by the administrative council with a written invitation made public in accordance with the procedure stipulated in the bylaws. The summons lists the agenda, as well as the day, hour, and place where the meeting will be held. The general assembly may not pass resolutions on items not included on the agenda unless all members are present at the meeting and agree to it.

(2) The general assembly is summoned:

1. Regularly: once a year, in the course of which the activities of the cooperative are reported;

2. Extraordinarily: by decision of the administrative council, by request of the control council or of one-third of the members of the cooperative. If the administrative council does not convene the assembly, it must be convened by the control council or by one-third of the members of the cooperative.

3. The administrative council must convene the general assembly on matters that fall within its exclusive jurisdiction within the 14 days from the day the request was received. If it fails to do so, the general assembly is convened as described in item 2.

Article 19. Quorum

(1) The general assembly is legitimate if attended by more than one-half of the membership. The general assembly needed for the adoption of the bylaws, restructuring, and liquidation of the cooperative is valid if it is attended by more than two-thirds of the membership.

(2) In the absence of a quorum, the meeting is adjourned and convened after seven days, with the same agenda. If once again there is no quorum, the meeting is held one hour later, regardless of the number of those present.

Article 20. Decisionmaking

(1) The resolutions of the general assembly are passed by simple majority of the members present, unless otherwise stipulated by the bylaws.

(2) The resolutions described in Article 17, paragraph 2, items 1, 3, 7, 8, 9, 10, and 14, must be passed by a two-third majority of all members.

(3) Voting in a general assembly is public unless secret balloting is required by law. In other cases as well the assembly may decide on a secret vote.

Article 21. The Right To Vote

Regardless of the amount of his contribution, every member is entitled to a single vote which he casts in person.

II. Administrative Council

Article 22. Membership

(1) The members of the administrative council are appointed among the members of the cooperative for a term of three years. No more than two-thirds of the members of the previous administrative council may be reelected members of the new administrative council.

(2) The following may not be elected members of the administrative council:

1. Individuals under the age of 18, with the exception of trainees in student cooperatives; legally disabled individuals;

2. Individuals who have lost the right to hold managerial, accountability, or material-liability positions;

3. Individuals who are married to a member of the administrative or control council, are blood relatives of same, or are brothers or sisters of the same.

Article 23. Authority

(1) The administrative council implements the resolutions of the general assembly and directs the activities of the cooperative. It implements other functions as well, as stipulated in the law and the bylaws. The administrative council reports to the general assembly on its activities.

(2) The administrative council may appoint an executive director and other leading officials if so stipulated in the bylaws.

(3) The administrative council may set up its own organs: commissions, councils, and others, to assist it in its activities.

Article 24. Summoning

(1) The administrative council is summoned to a meeting by the chairman no less than once monthly. The chairman must convene the administrative council also by request of one-third of its members, within seven days. Should he fail to do so, the administrative council is convened by the control council.

(2) The meetings of the administrative council are valid if attended by no less than two-thirds of its members.

Article 25. Decisionmaking

The resolutions of the administrative council are passed by open vote and simple majority of its members, unless otherwise stipulated in the bylaws.

Article 26. Liability

The members of the administrative council are jointly liable for causing any damages to the cooperative.

Article 27. Representation in Court Disputes

In court disputes between the cooperative and the members of the administrative council, the cooperative may also be represented by one or several individuals appointed by its general assembly.

III. Chairman

Article 28

(1) The chairman of the cooperative is also chairman of the administrative council and participates with an equal vote in its proceedings.

(2) The cooperative chairman:

1. Represents the cooperative;

2. Organizes the implementation of the resolutions of the general assembly and the administrative council;

3. Manages the current affairs of the cooperative.

IV. Control Council

Article 29. Membership

(1) The members of the control council are elected from among the members of the cooperative for a term of three years. The control council elects one of its members as its chairman.

(2) The individuals stipulated in Article 22, paragraph 2, as well as cooperative members who hold or have held any materially liable or accountable position in the cooperative, or have been members of the administrative council during the previous year, may not be members of the control council.

Article 30. Authority

(1) The control council supervises the activities of the cooperative and reports on its work to the general assembly.

(2) The members of the control council may participate in the meetings of the administrative council in a consulting capacity.

(3) The members of the control council who meet the requirements for holding a financial-control position have the same rights as those of the financial-control organs.

(4) Should the control council notice major violations of the law or the bylaws on the part of the administrative council, it convenes the general assembly.

(5) The stipulations of Article 26 apply to the members of the control council.

Section IV

Property, Income Distribution, Taxes

Article 31. Property

(1) The property of the cooperative consists of the right of ownership and other material rights over long-term and short-term assets, rights on trademarks, industrial prototypes, licenses, securities, participation in companies, and other rights and obligations.

(2) The property of the cooperative is managed exclusively by the cooperative members through the cooperative officials.

(3) The statute of limitations does not apply to any asset owned by a cooperative.

Article 32. Sources of Funds

The following are the sources of cooperative funds:

1. Joining fees paid by the members;
2. Share contributions by the members;
3. Additional contributions by the members;
4. Income from activities;
5. Loans;
6. Other revenue.

Article 33. Membership Fees

(1) Every member of the cooperative must mandatorily make a joining and share contribution, the amount of which is stipulated in the bylaws.

(2) The amount of the deposited shares constitute the share capital of the cooperative.

(3) The right to ownership of the land contributed to the cooperative is certified with a notarized document or a valid resolution of the municipal land commission. The document on the contribution of the land must be signed by the member of the cooperative and the chairman of its administrative council and entered in the notary records.

(4) The share deposit may not be attached or confiscated;

(5) The members of the cooperative may lend funds to the cooperative that do not reflect on its capitalization;

(6) The amount of the interest to be paid on loans as described in the preceding paragraph is determined by the cooperative's general assembly.

Article 34. Property Liability of the Cooperative

(1) The assets of the cooperative are collateral for its obligations.

(2) The members of the cooperative are liable for its obligations to the extent of their contributed share.

Article 35. Distribution of General Income, Profit and Losses

(1) Accounting activities of the cooperative are based on the Law on Bookkeeping.

(2) The general assembly of the cooperative determines the general income, the profit and the losses, and the type of monetary funds and amounts of withholdings for them, as well as the procedure and means of their collection and expenditures.

(3) The amount of the profit is reduced by the amount of withholdings for the various cooperative funds. The balance of the profit is distributed as dividend to its members by decision of the general assembly.

Article 36. Cooperative Funds

(1) The cooperative sets up a "Reserve" Fund and other funds as resolved by the general assembly.

(2) Every year funds from the profits must be set aside for the Reserve Fund which may not fall under 20 percent of the capitalization. The specific amount is defined by the general assembly.

(3) Should the cooperative end the calendar year with a loss, by decision of the general assembly of the cooperative the loss is covered from the assets of the Reserve Fund, or else is rolled over for the subsequent years.

Article 37. Tax Payments and Concessions

(1) The cooperative pays to the state a sales tax, customs duties, fees, and excise fees as stipulated by law.

(2) The cooperative is exempt from all taxes and fees relative to its founding, restructuring, termination, and liquidation.

(3) The members of the cooperative are exempt from all taxes and fees on their contributions and related right transfers.

(4) The dividend paid to the members of the cooperative, applied to increase their capital contribution, is not taxable.

(5) Cooperatives of citizens with diminished work capacity and student cooperatives are exempt from all taxes and fees.

(6) The Council of Ministers may lower the taxes of a cooperative or exempt it for other activities as well, in accordance with their nature and the area in which they take place.

Article 38. Deposit-Credit Activities

By decision of the general assembly, the cooperative may engage in deposit-crediting activities.

Article 39. Mutual Aid Fund

(1) The cooperative may set up a mutual aid fund for its members.

(2) The mutual aid fund is a juridical person with its separate bank account.

(3) Chapter 2 of the present law applies, respectively, to the cooperative mutual aid funds.

Section V

Restructuring, Termination, Liquidation

Article 40. Restructuring

(1) The conditions for a merger of cooperatives must be discussed by their administrative councils and approved by their general assemblies.

(2) The splitting of a cooperative or withdrawal from it must be decided by the general assembly.

Article 41. Membership by Right

The members of a merged cooperative become members of the new cooperative, while the members of the cooperative that has seceded become members of the newly formed cooperatives.

Article 42. Liability in Restructuring

(1) In a split the newly formed cooperatives are jointly liable for the obligations of the terminated cooperative.

(2) In the secession of a newly formed cooperative, the cooperative is jointly liable for the obligations of the cooperative from which it has seceded.

Article 43. Terminating the Cooperative

(1) The cooperative is terminated in the following cases:

1. By decision of the general assembly;

2. By decision of the okrug court; by request of the prosecutor in the following cases:

a. If it is pursuing objectives prohibited by law or engaging in activities prohibited by law;

b. If the cooperative has remained with a number of members under the stipulated minimum and has not replenished its membership within six months;

c. If the time period for which it was established has ended, or in any other cases as stipulated in the bylaws;

d. If it is declared financially insolvent.

(2) The terminated cooperative is declared in a state of liquidation.

Article 44. Liquidators

(1) In terminating the activities of the cooperative, the general assembly appoints a liquidator or a liquidation commission consisting of three members, and sets a time period for liquidation. The liquidators may include individuals who are not members of the cooperative.

(2) If the cooperative is terminated by the court, the court appoints liquidators and sets the time limit for liquidation.

(3) The individuals indicated in Article 22, paragraph 2, may not be appointed liquidators.

Article 45. Activity of Termination and Liquidation

(1) The termination of a cooperative and the declaration of its state of liquidation must be recorded.

(2) The termination and liquidation of the cooperative starts as of the day the registration decision has been promulgated.

Article 46. Rights and Obligations of the Liquidators

(1) The liquidators have the rights and obligations of the administrative council. The cooperative is represented by the liquidator; if a liquidation commission has been appointed, it is represented by one of its members indicated by the general assembly or the court.

(2) The liquidators wind up the current projects of the cooperative, convert its property into cash, collect accounts receivable, and meet the obligations of the cooperative.

(3) The liquidators may terminate concluded contracts by the cooperative as of the time of the announcement of its state of liquidation by paying damage compensations. Such compensations are paid together with the claims of the other creditors.

Article 47. Claims

(1) The creditors of a cooperative in a state of liquidation must file with the liquidators their claims regardless of their origin, collateral, or executability within one month of the day of promulgation of the decision as described in Article 46, paragraph 2.

(2) The liquidators must request that the creditors with known addresses file their claims with a certified letter.

(3) In cases of disputed claims, the liquidators inform the creditors as described in the preceding paragraph. If the creditors file a claim within one month of receipt of the information, the liquidators record the claims in the liquidation balance account as contestable.

Article 48. Satisfaction of Creditors

(1) If the property of the cooperative is insufficient to satisfy the claims of all creditors, the liquidators begin by meeting the claims of creditors with privileged claims, in their order, followed by the remaining creditors, in proportion to their claims.

(2) Creditors who have not filed their claims within the stipulated time will have their claims satisfied out of the property remaining after the distribution of the assets.

(3) The share deposits will be refunded to the cooperative members after the outstanding obligations have been met. Should the property be insufficient, it will be allocated in proportion to their contributed share.

Article 49. Writs of Execution

No individual writ of execution concerning the property of a cooperative in liquidation is allowed.

Article 50. Deletion of the Cooperative

(1) Following the final distribution of the property, the liquidators submit their reports to the general assembly which passes a resolution terminating the cooperative.

(2) If the cooperative has been terminated by the court, the liquidators submit the reports to the court. In that case, the decision to terminate the cooperative is decreed by the court.

(3) Within seven days of the adoption of the resolution described in the preceding paragraph, the liquidators must ask the court to record the resolution.

Article 51. Distribution of Assets

In the termination of the cooperative through liquidation, the balance of its assets is distributed among the members of the cooperative in proportion to their contribution, unless otherwise stipulated by the bylaws.

Article 52. Resumption of Activities

If the cooperative has been terminated by the general assembly, the latter may resolve, prior to completing the liquidation, that the cooperative should resume its activities. In that case the general assembly makes the appointments as per Article 18, paragraph 2, items 2 and 3. This resolution is recorded by the court.

Article 53. Remuneration of the Liquidators

The funds for paying the liquidators must be approved by the authority as described in Article 45 and are provided by the cooperative. The remuneration of the liquidators is paid before any other claims.

Article 54. Responsibility of the Liquidators

The liquidators are jointly responsible to the cooperative for any damages they may cause to it.

Section VI

The Cooperative Enterprise

Article 55. Establishment, Restructuring, and Termination

(1) Cooperatives may set up cooperative enterprises for specific economic activities.

(2) A cooperative enterprise may be a juridical person.

(3) A cooperative enterprise may be set up, restructured, and terminated by decision of the general assembly of the cooperative. Included in the resolution to form an enterprise is the name, statute, headquarters, type of activities, and assets granted to the enterprise. The decision is entered in the okrug court register where the enterprise has its headquarters.

(4) The administrative council must approve the regulation governing the structure and activities of the enterprise.

Article 56. Enterprise Assets

(1) The enterprise's assets are the property of the cooperative that has set it up. The enterprise has the right to use said assets and dispose of them in accordance with regulations.

(2) The procedure for the distribution of the profits is set by the authority which created the enterprise.

Article 57. Enterprise Manager

The enterprise is represented by its manager. The manager is appointed or dismissed by the administrative council of the cooperative that set up the enterprise.

Chapter 3

Intercooperative Enterprise

Article 58. Establishment

(1) Cooperatives may set up intercooperative enterprises engaging in economic and other activities of joint interest.

(2) The general assemblies of the cooperatives, as per paragraph 1, may pass resolutions on the founding of an intercooperative enterprise and elect representatives to its constituent assembly.

(3) The intercooperative enterprises are juridical persons.

Article 59. Referral

The stipulations of Chapter 2 and Chapter 5 are applicable, respectively, in the case of problems of an intercooperative enterprise not mentioned in this chapter.

Chapter 4

Cooperative Associations

Article 60. Establishment

(1) By decision of their general assemblies, the cooperatives may unite within territorial, sectorial, and other associations.

(2) No less than two cooperatives may form an association.

(3) Cooperative associations may set up their own associations or federations.

Article 61. Functions

The cooperative association:

1. Assists its members in attaining the objectives and tasks of the association;

2. Formulates trends for the development of cooperative activities;

3. Protects the interests of its members in dealing with state, public, and other authorities and organizations;

4. Carries out other functions as well, as stipulated in the bylaws.

Article 62. Authorities

(1) The authorities of the cooperative association are the following: the general assembly, the administrative council, the chairman, and the control council. The members of the administrative council are elected by the general assembly to a three-year term.

(2) The bylaws may stipulate that the administrative council elect from among its members an executive committee which will define its authority and decision-making procedures.

(3) The general assembly of the cooperative association consists of representatives elected by the general assemblies of its members in accordance with the procedure and conditions stipulated in its bylaws.

Article 63. Funds

(1) The cooperative association may set up various cash funds for mutual aid, education, training, etc.

(2) The funds described in the preceding paragraph may be set up by decision of the association's general assembly.

Chapter 5

Court Supervision

Article 64. Grounds and Procedure

(1) The decisions and actions of the authorities of the cooperative, which may conflict with the law or the bylaws, may be rescinded with a claim filed with the rayon court at the headquarters of the association.

(2) A claim may be filed by any member of the cooperative, the control council, or the prosecutor.

(3) A member of the cooperative may file a claim within two weeks from the day of the resolution; if a member had been absent when the resolution was adopted, from the day that he found out about it or was informed about it. If a claim for rescinding an action is filed, the term starts on the day he was informed. In all cases, the claim may be filed up to one year from the day the decision was made or the action was taken.

(4) The cooperative's control council may file a claim within two weeks from the when the decision or the action was made.

Article 65. Court Rulings

(1) The court may rescind entirely or partially any act or action or reject a claim.

(2) The court's ruling may be appealed in accordance with general procedures.

Article 66. Joining in the Claim

(1) Other members of the cooperative and the control council may join in the claim. They may support the claim even if it has been withdrawn.

(2) A petition to rescind a resolution or action by the authority of the cooperative may be filed by a cooperative member along with a claim for its property rights which have been violated by the resolution or the action.

Article 67. Interruption of Execution

Until the court ruling is issued, the court may stop the execution of the appealed resolution or action.

Additional Stipulations

Section 1. (1) The rights of the existing and restored cooperatives over the property which was confiscated from them and taken by the state after 10 September 1944 are hereby restored.

(2) The right of ownership of the property stipulated in the preceding paragraph is established on the basis of notarized documents, minutes, balance sheet reports, receipts for paid taxes, fees and insurance policies, court rulings, or other written proof. If no such documents are available, the right of ownership is determined on the basis of general claims procedures. The adjudication of such cases is exempt from state fees.

(3) State, municipal, and other firms and organizations will deliver the property to the cooperatives, as per paragraph 1, within six months after the enactment of the law.

(4) The procedure and conditions for the restoration of the property are defined by the Council of Ministers.

Section 2. (1) The property owned by the cooperative associations prior to the enactment of this law will be distributed among the member-cooperatives in proportion to their contributions (withholdings) to the association funds. Cooperatives that have been given this property will handle it in accordance with the present law.

(2) Resolutions on the distribution of the property as per the preceding paragraph will be passed by the general assembly of the respective association.

(3) The general assembly of the cooperative association will determine the share of such funds which will be converted into cash assets of the association in accordance with Article 63 of this law.

Section 3. The shares and cash received by the cooperative as described in the preceding paragraph will be deposited into the Reserve Fund.

Interim and Concluding Provisions

Section 4. The present law rescinds the Law on Cooperative Organizations (published in DV No. 102, 1983; amended No. 46, 1989).

Section 5. Obligations as per sections 2 and 3 of the additional stipulations of this law must be executed within six months of its enactment.

Section 6. The present law rescinds Ukase No. 922 On the Use of Land and Engaging in Agricultural Activities (DV, No. 39, 1989; amended, No. 10/1990).

Section 7. (1) The organizations founded and registered as per Ukase No. 922 are granted the status of cooperatives as per the present law providing that they register before 1 March 1992.

(2) The registration of the newly formed cooperatives does not require a resolution of the general assembly of the organizations as per paragraph 1.

Section 8. The following have voting rights in the general assembly in determining the rental and share of the property of the organizations as per section 7, paragraph 1:

1. Cooperative members or the authorized representative of their heirs;

2. Noncooperative members, owners of land farmed by agricultural organizations, or an authorized representative of their heirs.

3. Individuals who have worked no less than five years and individuals who have legal labor relations with agricultural organizations on the day of the enactment of this law.

Section 9. The owners of land or their heirs who are not members of the TKZS [labor cooperative farm] have the right to a share of TKZS property. Their shares are for the years during which the land was farmed by the TKZS.

Section 10. Owners of land and of shares of TKZS property have the right to receive rental payments and dividends as of the enactment of the Law on the Ownership and Utilization of Farmland.

Amendments to Resolution on Farmland Ownership

91BA0997B Sofia DURZHAVEN VESTNIK in Bulgarian 26 Jul 91 No 60 pp 4-5

[Resolution No. 140 of 18 July amending and supplementing the Resolution on the Application of the Law on Ownership and Utilization of Farmland (DURZHAVEN VESTNIK, No. 34, 1991, which was published in DUMA on 27 April and was published in JPRS-EER-91-077-S, 7 June)]

[Text] Council of Ministers Resolution:

1. In Article 13, Paragraph 3, the words "as per Paragraph 2, Item 2" shall be added to the words "in the declarations."

2. In Article 19, Paragraph 2, first sentence, and Paragraph 3, third sentence, the words "in the resolutions as per Article 17" will be replaced with "in the enacted resolutions as per Article 17."

3. In Article 25, Paragraph 1, first sentence, the words "for the preparation" will be replaced with "that it has been prepared."

4. In Article 27, Paragraph 2, a new sentence is added at the end: "The court's decision may not be appealed."

5. In Article 28, Paragraph 1, first sentence, the words "enacted resolutions as per Article 17" will be replaced with "resolutions as per Article 19, Paragraph 2."

6. In Article 37, Paragraph 3, second sentence, the words "as per Article 14, Paragraph 1" will be replaced with "as per Article 13, Paragraph 1."

7. Article 58 is amended as follows:

1. In Paragraph 1 the words "deputy chairman" are replaced with "two deputy chairmen."

2. In Paragraph 3 the words "number and composition" are replaced with "composition."

8. Article 59 is amended as follows:

1. The present text of Article 59 becomes Paragraph 1.

2. A new Paragraph 2 is added, as follows:

"(2) Disputes as per Item 8, Paragraph 1, may be resolved also by entities as defined by resolution of the National Land Council."

9. In Article 60, Paragraph 4, the words "number and members" are replaced with "members."

10. Paragraph 4 is deleted.

11. In Paragraph 5 the words "Article 14 and following articles" are replaced with "Article 13 and following."

Concluding Stipulation

12. This resolution shall be enacted as of the day of its publication in DURZHAVEN VESTNIK.

Chairman of the Council of Ministers: Dimitur Popov
Chief Secretary of the Council of Ministers: Ivan Minev

Decree on Transition to Collective Bargaining

91BA0998A Sofia DURZHAVEN VESTNIK in Bulgarian 12 Jul 91 No 55 pp 3-12

[Council of Ministers Resolution No. 129 of 5 July on conversion to wage contracting]

[Text]

Council of Ministers Resolution:

Article 1. (1) Starting with 1 July 1991, wage contracting will be applied in enterprises and organizations.

(2) The managements of enterprises and organizations must provide the necessary conditions for prompt collective bargaining with a view to concluding it by 1 September 1991 for economic enterprises and 15 September 1991 for budget-supported organizations.

(3) By no later than 15 July 1991, the managements of enterprises and organizations must initiate talks with the respective trade union organizations on the ways, objectives, deadlines, and interaction in wage contracting.

Article 2. As of 1 July 1991 the minimal monthly wage for the country will be 620 leva and the minimal hourly wage 3.44 leva, with a normal duration of the legally stipulated working time.

Article 3. (1) In wage contracting, the initial monthly wage, as of 1 July 1991, will be 652 leva.

(2) In wage bargaining for a differentiated initial monthly wage as per Paragraph 1, the following recommended coefficients shall be applied, based on the educational level:

1. Secondary school training: 1.10;

2. Secondary specialized training: 1.15;

3. Semi-higher training: 1.25;

4. Higher training: 1.35.

(3) The coefficients as per Paragraph 2 shall apply when the respective level of training is required for a given job (position).

Article 4. (1) The following is adopted:

1. Regulation on wage contracting (Appendix No. 1);

2. Regulation on additional labor and other remuneration (Appendix No. 2);

3. Table of coefficients for determining initial monthly wages based on position grades in budget-subsidized organizations and units (Appendix No. 3);

4. Classifier of the names of positions by grade in budget-subsidized organizations and units (Appendix No. 4);

5. Classifier of positions by grade, educational level and standards of management in budget-subsidized organizations and units (Appendix No. 5);

6. Regulation controlling increases in and forming of Wage Funds (Appendix No. 6).

(2) The regulation controlling the increase in and forming of Wage Funds (Appendix No. 6) shall be applied as of 1 July 1991.

Article 5. By 15 July 1991 the Ministry of Labor and Social Welfare must submit to the Council of Ministers a proposal on the necessary amendments to the legal acts regulating labor and social insurance, based on wage contracts.

Article 6. Ministries, departments, and provisional executive committees of municipal people's councils must assist the enterprises and organizations in making preparations for wage contracting.

Article 7. The Central Statistical Administration and its territorial agencies must provide ministries, departments, enterprises and organizations with the necessary information related to wage contracting.

Article 8. As of 1 July 1991 and until the conclusion of the collective labor contracts or wage agreements:

1. Workers and employees earning the minimal monthly wage of 165 leva shall receive the new amount of the minimal monthly wage of 620 leva. No compensations will be added to that minimal wage;

2. The remaining workers and employees will retain their basic wages as per the labor contract and compensations will continue to be paid in accordance with the procedure and steps stipulated in Article 1, Paragraph 2, of Resolution No. 121 of the Council of Ministers of 1991.

Article 9. As of 1 July 1991, compensations will be included in the amount of the basic wage in computing monetary compensations, aid and additional payments as per the Labor Code.

Article 10. (1) Starting with 1 July 1991, added to the amount of the pension or the sum of pensions received as per the stipulations of the Law on Pensions, the Law on Social Security and the rescinded Law on the Pensioning of Cooperative Farmers, a supplement will be paid equal to the difference between the respective kind of minimal pension, as per Article 47b of the Law on Pensions, in percent of the minimal wage from which the general income tax has been withheld, as per Article 2, and the

minimal pension for the same type, as defined in terms of the respective percentage of the previous minimal wage (165 leva).

(2) The amount of the pensions or the sum of the obtained pensions, in addition to the supplement as per Paragraph 1, may not be below the minimal amount of the respective type of pensions as stipulated in Article 47b of the Law on Pensions.

(3) Starting with 1 July 1993, compensations based on Resolutions 8, 85, and 121 of the Council of Ministers of 1991 will not be added to the pensions.

Article 11. The representatives of the sides participating in the discussions may use, if necessary, official paid leave as per Article 161 of the Labor Code in the amount agreed upon by the parties.

Provisional and Concluding Stipulations

1. The present resolution shall apply to all enterprises and organizations employing hired labor, regardless of their form of ownership.

2. Resolution No. 24 of the Council of Ministers of 1991 on amending and supplementing the Regulation on the Application of Ukase No. 56 on Economic Activities (D.V., No. 16, 1991) of 1 July 1991 is hereby rescinded.

3. (1) The following are deleted:

1. Paragraph 3 of Article 13 of the Regulation on Working Time, Leisure Time, and Leave, adopted with Council of Ministers Decree No. 72 of 1986 (published in DURZHAVEN VESTNIK [D.V.], No. 6, 1987; amended and supplemented, No. 31, 1991).

2. Section II of the Regulation on Special Case Wages, adopted with Council of Ministers Resolution No. 72 of 1976 (published in D.V., No. 7, 1987; amended and supplemented No. 88, 1987; No. 54, 1988; No. 101, 1989; Nos. 7, 68, and 100, 1990; and No. 31, 1991).

3. Resolution on Additional Wages for Adverse and Other Specific Labor Conditions, adopted with Council of Ministers Resolution No. 72 of 1986 (published in D.V., Nos. 9 and 10, 1987; amended, No. 33, 1987; amended and supplemented, Nos. 54 and 81, 1988; Nos. 3 and 11, 1989; No. 45, 1991).

4. Resolution No. 66 of the Council of Ministers and the Central Council of Bulgarian Trade Unions of 1987 approving a new system of basic wages and improving the organization of wages in self-managing organizations (D.V. No. 11, 1988; amended and supplemented Nos. 34 and 38, 1990).

5. Resolution No. 10 of the Council of Ministers and the Central Council of Bulgarian Trade Unions of 1988 on raising the wages of scientific workers and creative cadres in cultural and information media organizations and the application of the new system of basic wages (D.V. No. 31, 1988).

6. Resolution No. 20 of the Council of Ministers and Central Council of Bulgarian Trade Unions of 1988 on creating conditions for the application of a new system of basic wages (D.V. No. 54, 1988).

7. Resolution No. 50 of the Council of Ministers of 1989 on the application of the new system of basic wages in public education (D.V. No. 91, 1989).

8. Article 24 of Resolution No. 61 of the Council of Ministers of 1989 on Health care restructuring (D.V. No. 101, 1989; amended and supplemented No. 43, 1990, and No. 27, 1991).

9. Article 6 of Resolution No. 41 of the Council of Ministers of 1990 on resolving some pressing problems in transportation and other sectors and activities (D.V. No. 38, 1990).

10. Resolution No. 56 of the Council of Ministers of 1990 on basic wages for some activities in state administration (D.V. No. 47, 1990).

11. Council of Ministers Resolution No. 75 of 1990 (supplemented with Council of Ministers Resolution No. 100, 1990) on the introduction of new wages in ministries, and other departments and oblast people's councils (D.V. No. 60, 1990).

12. Council of Ministers Resolution No. 87 of 1990 on the introduction of new wages of customs officials (D.V. No. 64, 1990).

13. Council of Ministers Resolution No. 109 of 1990 on names of positions and basic wages in justice, the Prosecutor's Office, and state arbitration (D.V. No. 96, 1990).

14. Council of Ministers Resolution No. 12 of 1983 on improving working conditions at the Ivan Vazov National Theater, the Sofia National Opera, and the Sofia Philharmonic (unpublished).

(2) Enterprises and organizations shall apply the legal acts as per Paragraph 1 until the collective labor contracts or wage agreements have been enacted.

4. By 25 July 1991 ministries and other departments, coordinated with the Ministry of Labor and Social Welfare, must submit to the Council of MInisters proposals on amending, supplementing or rescinding other legal acts dealing with labor wages and conflicting with the present resolution.

5. The following amendments are introduced in the regulation on labor wages in special cases (D.V. No. 7, 1987; amended No. 88, 1987; No. 54, 1988; No. 101, 1989; Nos. 7, 68, and 100, 1990; and No. 31, 1991):

1. Paragraph 2 of Article 33 is amended to read as follows:

"(2) In the case of workers converting to work of a different group, for which additional higher remuneration is paid, with a different labor seniority, the length of

seniority is determined as follows: two years in group No. 3 are the equivalent of one year in group No. 2; 3.5 years in group No. 3 are the equivalent of one year in group No. 1; two years in group No. 2 are the equivalent of one year in group No. 1; 1.5 years work as tractor driver or re-enlistment in military service are the equivalent of one year in group 1."

2. In Paragraph 3, Article 33, the second sentence is deleted.

3. Article 36 is amended to read as follows:

"Article 36. In the sense of Article 245, Paragraph 2, of the Labor Code, the guaranteed wage of workers who have fulfilled their labor obligations shall apply to the minimal monthly wage set for the country."

4. Paragraph 1 of the additional stipulations shall be amended to read as follows:

"1. Section V of the present regulation shall also apply to tractor drivers-mechanics in agriculture; the amount of their additional remuneration for labor seniority shall be as follows: three to five years, 6 percent; five to 10 years, 12 percent; 10 to 15 years, 16 percent; 15 to 20 years, 20 percent; over 20 years, 24 percent."

6. Until the classification of professions and positions consistent with international standards, has been adopted, the Ministry of Labor and Social Welfare shall issue instructions on the types of positions to be included in the wage contracting conditions.

7. The Ministry of Labor and Social Welfare will provide the necessary interpretations for the application of the present resolution.

Council of Ministers Chairman: Dimitur Popov
Council of Ministers Chief Secretary: Ivan Minev

Appendix No. 1 to Article 4, Paragraph 1, Point 1:

Regulation on Wage Contracting

Section I. General Stipulations

Article 1. (1) The present regulation defines the principles, scope and regulations for collective wage contracting and setting the specific amount of wages based on individual labor contracts for workers and employees in all enterprises and organizations.

(2) Wage contracting may pertain to any question related to the labor remuneration of the worker or employee not settled on the basis of the mandatory stipulations of a law or a legal act.

Article 2. The objective of wage contracting is to reach an agreement between the parties concerning the amount, correlation, dynamics, and organization of wages under the specific conditions of an enterprise or organization.

Article 3. Wage contracting is based on the following:

1. Labor quantity, quality, and efficiency;

2. Labor conditions;

3. The necessary means for manpower reproduction;

4. Economic considerations, including the requirements governing economic development, labor productivity, and maintaining the desired level of employment.

Section II. Collective Wage Contracting

Article 4. Collective wage contracting is based on the procedure and technology for the signing of collective labor contracts and agreements.

Article 5. Collective wage contracting takes place:

1. On the national level: between the government and the representative national organizations of the trade unions and the employers;

2. In the enterprise or organization: between the respective employer and the representative organizations of the trade unions.

Article 6. Collective wage contracting on a national level takes place by concluding an agreement between the parties and includes:

1. The means, principles and procedures for determining the amount of the minimal wage for the country as well as the grounds, conditions and procedure for changing it;

2. The amount of the minimal hourly and monthly wage for the country and recommended coefficients for differentiation among the initial wages, based on educational level;

3. Types and minimal amounts of additional labor and other remunerations, in as much as they are not mandatorily set by the Labor Code;

4. Ways of determining the Wage Funds, the positions and the coefficients for determining the initial wages for such positions within budget-subsidized organizations and units;

5. The need to regulate Wage Funds;

6. The principle, means and time limits for regulating the Wage Fund;

7. Other matters agreed upon by the parties in the course of their contracting work.

Article 7. The collective contracting of wages in enterprises or organizations encompasses the following:

1. The amount of the minimal hourly, daily, or monthly wage for the enterprise or organization;

2. Starting wages; differentiated by personnel category, position, required level of education and skill, or any other feature, as well as the grounds and means for their determination;

3. Ways of rating jobs of blue- and white-collar workers and determining the amount of their wages;

4. Ways of assessing labor results and determining wages based on such results;

5. Types and amounts of supplemental wage remunerations and additions;

6. Wage changes, based on inflation or other economic factors;

7. Mechanisms for the distribution of Wage Funds by structural units in enterprises and organizations;

8. System for reflecting labor conditions in wages;

9. Periodicity in wage payments;

10. Other problems resolved in the course of contracting.

Article 8. (1) If so requested by either party, collective wage contracting may be done by:

1. Sectors or branches: among sectorial or branch organizations of trade unions and employers;

2. Municipalities or areas: among municipal and regional formations of trade unions and employer associations.

(2) On the sectorial and branch levels, as well as in municipalities and individual areas, the parties themselves define the object and scope in collective wage contracting, as well as the binding nature of agreements for enterprises and organizations in the sector, branch, municipality or region represented in the talks.

Article 9. In budget-subsidized organizations, wage contracting is based on the stipulations of Points 3, 4, 7, and 10 of Article 7; for the remaining Points, contracting is conducted on the sectorial (branch) level.

Section III. Principles, Means, and Procedures for Determining the Minimal Wage for the Country

Article 10. (1) The minimal wage is the lowest-possible wage for the amount of time worked or for the accomplished work.

(2) The following is taken into consideration in determining the minimal wage for the country: the needs of the working people and their families; the cost of living and changes in it; the general level of wages in the country; the system of social assistance; the living standards of the other social groups; economic factors, including the requirements of the country's economic development, the level of labor productivity, and the need to keep employment on the necessary expedient level.

Article 11. The minimal wage for the country, as defined by the Council of Ministers, is guaranteed for the conscientious implementation of obligations and does not depend on the achieved results or the solvency of the employer. It is the foundation in determining the minimal amounts of social assistance and insurance payments.

Article 12. The stipulated minimal wage for the country may be increased in the course of contracting in the sectors, enterprises and organizations. The minimal wage set by contracting may not be lower than the one stipulated by the Council of Ministers.

Section IV. Computing Wages Based on Individual Labor Contracts

Article 13. The amount of the wages of workers and employees is set in the individual labor contracts in accordance with the agreements concerning wages set in the collective labor contract.

Article 14. In determining the specific amount of the wage based on an individual labor contract, the binding stipulations of the Labor Code or any law, ukase, statute or any other legal act must be observed.

Article 15. If the individual labor contract does not specifically list the conditions and indicators for changing the agreed-upon wage, the conditions and procedures adopted with the collective labor contract shall apply.

Article 16. The individual labor contract also determines the fixed additional remunerations.

Article 17. The wage based on a labor contract and additional labor remunerations may be established on the basis of one hour, day, week, or month, depending on the nature of the job and the specific conditions.

Section V. Procedures for and Organization of Wage Contracting

Article 18. (1) The government submits to the representative organizations of the trade unions and the employers in writing its proposals on matters relative to wage contracting on the national level, by providing the necessary information and substantiation of its proposals.

(2) Talks on collective wage contracting on the national level begin at the time agreed upon among the parties and are held at the National Standing Trilateral Commission for the Coordination of Interests or an ad hoc commission set up on a trilateral basis.

Article 19. (1) Wage contracting in enterprises and organizations may be initiated by either party.

(2) The employer must inform the trade unions of his intentions concerning collective wage contracting in writing, as stipulated in Article 7.

(3) The employer must submit to the trade unions information concerning the following:

1. The condition and development prospects of enterprises or organizations for the time covered by the wage contract;

2. The amount of funds for transitional periods, based on accountability reports and computations for the contracting period and their breakdown by elements and subgroups;

3. The amount of minimal and average wages, based on reports for preceding periods and computations for the subsequent period, total for the enterprise as well as by branch, personnel category and profession;

4. Applicable regulations governing wages and proposals on their amendment and supplement;

5. Amounts and types of additional remunerations based on reports and proposals for the contracting period;

6. Any other information as agreed upon between the parties.

Article 20. Enterprises or organizations may conduct talks and sign collective labor contracts and agreements relative to wages regardless of whether talks are being held or any agreement has been signed on the national, sectorial, branch, municipal or regional levels.

Article 21. Should no agreement be reached on parts of problems of a collective labor contract, the parties may conclude a separate agreement on wages.

Article 22. If no agreement can be reached during the talks and in the conclusion of a collective labor contract or wage agreement, the dispute must be settled in accordance with the Law on Settling Collective Labor Disputes.

Section VI. Internal Legal Wage Settlement

Article 23. (1) Enterprises and organizations formulate their internal legal regulation on wages in accordance with the Labor Code and other legal acts governing economic activities, collective labor contracts, and wage agreements.

(2) The internal wage regulations of an enterprise or organization further expand and concretize the wage agreements which were made.

(3) Amendments and supplements to internal wage regulations are based on the procedure governing their approval.

Article 24. Tables of organization and worker wages by job (position) as well as corresponding job characteristics must be approved by the employer.

Provisional and Concluding Stipulations

1. The present regulation applies to all enterprises and organizations which use hired labor, regardless of their form of ownership.

2. (1) Agreements reached on the national level are binding and are the minimal base for wage contracting in sectors (branches), municipalities (regions), enterprises, and organizations.

(2) Wage agreements at lower levels may not be less advantageous than those reached at a higher level.

3. In the case of changes of employer, concluded collective labor contracts and wage agreements remain in force until reviewed.

4. The Ministry of Labor and Social Welfare shall provide clarifications on the application of the present regulation.

Appendix No. 2 to Article 4, Paragraph 1, Point 2

Regulation on Additional Labor and Other Remunerations

Section I. General Stipulations

Article 1. (1) The present regulation sets the minimal amounts and/or types of additional labor and other remunerations agreed upon on the national level and considered binding in contracting on other levels.

(2) The general targets of collective contracting also include other additional labor remunerations not specifically defined in terms of their amount in the Labor Code or in any other law, ukase or legal acts issued by the Council of Ministers.

(3) In collective contracting, the sides may also set additional labor remunerations based on their specific conditions.

Section II. Additional Labor Remunerations

Article 2. For each hour or fraction of an hour of night-time work, an additional labor remuneration must be paid of no less than 20 percent of the minimal hourly wage for the country.

Article 3. An additional remuneration per hour or fraction of an hour, of no less than 25 percent of the hourly wage stipulated in the labor contract must be paid for the time during which the worker or employee is in a place chosen by him and remaining at the disposal of the enterprise, outside of the enterprise's territory.

Article 4. For work during official holidays within the scheduled working time, the additional remuneration may not be less than 100 percent of the remuneration paid in accordance with the wage systems or the hourly wage stipulated in the labor contract.

Article 5. An additional monthly remuneration is paid in the following cases and in amounts determined in terms of a percentage of the minimal wage for the country for the use of greater individual skills on the job, as follows:

1. For "doctor of sciences" no less than 25 percent;

2. For "candidate of sciences" no less than 15 percent.

Article 6. (1) Enterprises and other organizations may provide free food in addition to the food stipulated in the Labor Code.

(2) The conditions and procedure for obtaining food free of charge and the professions and positions for which such food is provided, as well as the daily cost of the food or of the individual meal (breakfast, lunch, dinner) are determined with the collective labor contract or by agreement.

(3) The cost of the food provided at no charge does not include management and other costs. The cost of such food is included in the gross labor wage and subject to the general income tax.

Section III. Other Remunerations

Article 7. (1) Workers and employees in automotive transportation and railroad transportation, working in dining cars, or mobile postal services, or engaged in other similar activities, in the course of which the work is performed while traveling to another settlement (site) receive instead of per diem cash, for purposes of meeting their additional expenditures, no less than 1 percent of the minimal hourly wage for the country per traveled kilometer.

(2) If such travels require spending the night in a different settlement (site) outside the regular residence, per diem cash may be paid instead of observing the procedure of Paragraph 1, not to exceed the amount of the Regulation on Assignments Within the Country. In either case, a housing allowance is paid in accordance with the stipulations of the same regulation.

(3) Depending on their nature, the funds as per Paragraphs 1 and 2 are considered part of the general production expenditures or management costs.

Article 8. (1) Free food is provided in amounts stipulated in the collective labor contract to members of ships' crews for the days of work, to fishermen for the days of the catch, and to divers also for the days during which they work underwater.

(2) Free food as per Paragraph 1 may not be replaced with cash. The cost of the food does not include management and other expenditures and is not included in the gross labor wage nor is it subject to the general income tax. The costs of such food are included in the general production costs.

Provisional Concluding Stipulations

1. In shift work which, according to the Labor Code, involves work at night, the earned remuneration, based on the wage payment systems, must be increased by a coefficient equal to the ratio between the legally stipulated working time during the day and during the night.

2. Free preventive food and other benefits given to production workers in jobs with consequences harmful to the health are provided in accordance with the stipulations of Article 285 of the Labor Code.

The Ministry of Labor and Social Welfare shall issue instructions on the application of this regulation.

Appendix No. 3 to Article 4, Paragraph 1, Point 3

Table 1. Table of Coefficients for Establishing Initial Monthly Wages by Position Rating in Budget Supported Organizations and Units

Position Rating	Coefficient Applicable to the Initial Monthly Wage for the Country
I	1.35
II	1.5
III	1.6
IV	1.7
V	1.8
VI	1.9
VII	2.0
VIII	2.1
IX	2.2
X	2.4

Remark: The names of the positions in budget-subsidized organizations and units, by grade, are indicated in Appendix No. 4, and in terms of levels of management, grade, and education, in Appendix No. 5.

Appendix No. 4 to Article 4, Paragraph 1, Point 4

Table 2. Classifier of Names of Positions by Rating in Budget Subsidized Organizations and Units

Grade	Job Description
First	Specialists with higher training: engineer, economist, agronomer, and other similar (other than those stipulated in II, III, and IV grade)
Second	Specialist in mayoralty; trainee-aide
Third	Specialist in a specialized budget unit under a ministry or other department (including territorial authority); taxation specialist; specialist in a municipal people's council; deputy mayor second group; mayoral secretary second group; department chief; chief accountant and chief specialist in mayoralty first-second group; junior judge, junior prosecutor; deputy school principal with semi-higher training; aide

Fourth	Specialist in ministry, or another department, Sofia City People's Council, oblast people's council; chief accountant and chief specialist in a territorial budget agency of a ministry or other department; tax inspector; chief architect in a municipal people's council II-III group; chief legal council, chief accountant, chief of department and chief specialist in a municipal people's council; mayor second group; deputy mayor first group; mayoral secretary first group; executive judge; notary public; assistant, scientific associate third grade; school principal with semi-higher training; school deputy principal with higher training; deputy manager of a health institution; deputy director of an institute for the arts and culture and similar establishments; foreign affairs third secretary
Fifth	Chief specialist in a ministry or other department, the Sofia City People's Council and an oblast people's council; chief legal council, expert and chief tax inspector in a specialized budget unit directly subordinate to a ministry or another department; deputy chairman and secretary of an executive committee of a municipal people's council, third group; chief of administration in a municipal people's council; chief architect in a municipal people's council first group; mayor first group; senior assistant, scientific associate second grade; school principal with higher training; head of a health institution; deputy manager of a health institution; director of an institute for the arts and culture and other similar; foreign affairs second secretary
Sixth	Expert and chief accountant in a ministry or other department, the Sofia City People's Council or an oblast people's council; deputy manager of a specialized territorial agency of a ministry or other department; tax expert; chairman of the executive committee of a municipal people's council third group; deputy chairman and secretary of the executive committee of a municipal people's council second group; chief assistant, scientific associate first class; rayon judge; rayon prosecutor; manager of a health establishment, and foreign affairs first secretary
Seventh	Chief expert, chief legal council and department chief in a ministry of other department, the Sofia City People's Council, an oblast people's council; deputy manager of a specialized budget unit under the direct jurisdiction of a ministry or another department; deputy head of a tax administration; chief tax expert; manager of a specialized territorial agency, ministry, or other department; chairman of the executive committee of a municipal people's council second group; deputy chairman and secretary of the executive committee of a municipal people's council first group; chairman of a rayon court, rayon prosecutor; foreign affairs counselor
Eighth	Chief of administration in a ministry or another department, the Sofia City People's Council and an oblast people's council; chief of a specialized budget unit under the direct jurisdiction of a ministry or another department; manager of a tax administration; chairman of the executive committee of a municipal people's council first group; okrug court judge; prosecutor in an okrug prosecutor's office; docent, senior scientific associate second class; minister plenipotentiary
Ninth	Okrug court chairman; okrug prosecutor; professor, senior scientific associate first class; ambassador
Tenth	Supreme court justice; prosecutor in the prosecutor's general office; senior justice inspector; senior legislation expert.

Appendix No. 5 to Article 4, Paragraph 1, Point 5

Table 3. Classifier of Positions by Grade, Education, and Level of Administration in Budget-Subsidized Organizations and Units

Consecutive Number	Name of Position	Grade	Education
I. Ministries, Other Departments, Agencies, Sofia City People's Council, Oblast People's Councils			
1.	Chief of Administration	VIII	Higher
2.	Chief expert; chief legal council; department chief	VII	Higher
3.	Expert; chief accountant	VI	Higher
4.	Chief Specialist	V	Higher
5.	Specialist	IV	Higher
II. Specialized Budget Units Under the Direct Jurisdiction of a Ministry or Other Department			
6.	Manager; tax administration manager	VIII	Higher
7.	Deputy manager; deputy manager of tax administration; chief tax expert	VII	Higher
8.	Tax Expert	VI	Higher
9.	Expert; chief legal council, chief tax inspector	V	Higher
10.	Chief accountant, chief specialist; tax inspector	IV	Higher
11.	Specialist; tax specialist	III	Higher
III. Specialized Territorial Agencies and Units Under Ministries and Other Departments			
12.	Manager	VII	Higher
13.	Deputy manager	VI	Higher
14.	Chief legal counsel, chief accountant; department chief; chief specialist	IV	Higher
15.	Specialist	III	Higher
IV. Municipal People's Council			
16.	Executive committee chairman	VI-VII	Optional

Table 3. Classifier of Positions by Grade, Education, and Level of Administration in Budget-Subsidized Organizations and Units

Consecutive Number	Name of Position	Grade	Education
17.	Executive committee deputy chairman and secretary	V-VII	Optional
18.	Administration chief; chief architect in a municipal people's council first group	V	Higher
19.	Chief specialist; chief architect in a municipal people's council second-third group; chief legal counsel; chief accountant; department chief	IV	Higher
20.	Specialist	III	Higher
V. **Mayoralties**			
21.	Mayor	IV-V	Optional
22.	Deputy mayor; mayoralty secretary	III-IV	Optional
23.	Chief accountant, department chief; chief specialist	III	Higher
24.	Specialist	II	Higher
VI. **Justice, Prosecutor's Office, State Arbitration Authority**			
25.	Supreme Court justice; prosecutor in the prosecutor's general office; senior court inspector; senior legislation expert	X	Higher
26.	Okrug court chairman; okrug prosecutor	IX	Higher
27.	Okrug court justice; okrug prosecutor's office prosecutor	VIII	Higher
28.	Rayon court chairman; rayon prosecutor	VII	Higher
29.	Rayon judge; rayon prosecutor's office prosecutor	VI	Higher
30.	Judge-executor; notary public	IV	Higher
31.	Junior judge; junior prosecutor	III	Higher
VII. **Science and Education**			
32.	Professor; senior scientific associate first class	IX	Higher
33.	Docent; senior scientific associate second class	VIII	Higher
34.	Chief assistant; senior instructor in a VUZ (vocational VUZ); scientific associate first class	VI	Higher
35.	Senior assistant; teacher in a VUZ (professional VUZ); scientific associate second class	V	Higher
36.	Assistant; scientific associate third class	IV	Higher
37.	School principal	V	Higher
38.	School principal	IV	Semi-higher
39.	Deputy school principal	IV	Higher
40.	Deputy school principal	III	Semi-higher
VIII. **Health Services**			
41.	Manager of a health institution	V-VI	Higher
42.	Deputy manager of a health institution	IV	Higher
IX. **Culture, Art, Mass Information Media**			
43.	Director of an institute for the arts and culture, and other similar	V	Higher
44.	Deputy director of an institute for the arts and culture and other similar	IV	Higher
X.**Foreign Affairs (For the Personnel of the Ministry of Foreign Affairs Working Abroad in the Diplomatic Missions of the Republic of Bulgaria)**			
45.	Ambassador	IX	Higher
46.	Minister plenipotentiary	VIII	Higher
47.	Counselor	VII	Higher

Table 3. Classifier of Positions by Grade, Education, and Level of Administration in Budget-Subsidized Organizations and Units

Consecutive Number	Name of Position	Grade	Education
48.	First secretary	VI	Higher
49.	Second secretary	V	Higher
50.	Third secretary	IV	Higher
51.	Attache	III	Higher
52.	Trainee attache	II	Higher

Remarks: 1. For the positions included in the classifier the stipulated educational level is mandatory. It must pertain to the specialty consistent with the labor functions and be specific for the position.

2. The recommended coefficients relative to the degree of education, as per Article 3, Paragraph 2, of the present resolution, may be applied in the case of positions held by specialists with lower than higher training and positions for workers and employees not covered by the classifier.

3. By proposal of the ministries or other departments, on the basis of agreements reached with the respective trade union organizations, the Ministry of Labor and Social Welfare will approve coefficients for determining the starting wages for positions in budget-subsidized organizations and units not included in the classifier.

4. On the basis of agreements reached with the respective trade union organizations, the executive committees of the municipal people's councils shall approve a table of coefficients for determining the starting monthly wages for the various positions within the budget-subsidized organizations and units attached to them.

5. The wages in judicial and prosecutorial positions and specialists-jurists in judicial activities and legislation of the Ministry of Justice, not mentioned here, will be set by the minister of justice or, respectively, the prosecutor general and the chairman of the Supreme Court, based on seniority rating as stipulated in the respective structural laws. Those holding the position of "arbiter" will receive the salaries of the respective court and prosecution positions.

Appendix No. 6 to Article 4, Paragraph 1, Point 6

Regulation on Controlling the Growth and Formation of Wage Funds

Article 1. The present regulation sets the procedure for regulating the growth of funds for wages in enterprises and organizations with more than 50 percent state and municipal participation, and the formation of funds for wages in budget supported organizations and activities.

Article 2. (1) The increase in the Wage Funds of enterprises and organizations for each quarter of the current year as compared to the basic amount of Wage Funds stipulated in the present regulation will be taxed at the following rate:

Table 4.

Percentage of Increase in Wage Funds	Tax Rate, Percent
1 or less	—
More than 1 to 2	50
More than 2 to 3	100
More than 3 to 4	200
More than 4	400

(2) The tax rates in the scale as per Paragraph 1 will be applied separately for the sum of increase of wage funds included in the respective brackets.

Article 3. The basic amount of the wage funds for determining the increase as per Paragraph 1 of Article 2 is determined by correcting the computed amount for the respective quarter of the preceding year by the following:

1. The coefficient adopted as the ratio between the average gross wage for the quarter of the current year, preceding the period for which the increase in wage funds is computed, and the average gross wage for the quarter of the preceding year corresponding to the quarter, for which the increase for this year is computed. The average gross wage for the quarter of the current year is computed on the basis of the basic amount of the wage funds for that quarter, without taxing the increase, including the compensations owed as per Resolutions No. 8, 85, and 121 of the Council of Ministers of 1991;

2. The coefficient set as the ratio between the average index of retail prices for the country for the quarter for which the increase in wage funds is determined and the average index for the previous quarter;

3. The coefficient defined as a ratio between any change in the produced goods per individual for the quarter for which the increased wage funds are computed and the produced goods per individual during the preceding quarter, computed in comparable prices.

Article 4. The wage funds for the respective quarter of the preceding year are recomputed if the number of personnel in the enterprise or organization has increased or decreased, as a result of the following:

1. Opening, expanding or closing down branches (structural units), increasing the number of shifts and opening new jobs;

2. Transferring branches (structural units) out of or into the enterprise or organization;

3. Leasing projects to the enterprise or organization.

Article 5. The tax on the increase in the wage fund must be paid out of enterprise or organization profits.

Article 6. If it is impossible to determine the necessary wage funds of the enterprise or organization for the previous year, the amount is determined by multiplying the actual number of personnel by the average wage for the respective activity, based on the statistical figure for the country, for the corresponding quarter of the preceding year, amended as per the stipulations of Article 3.

Article 7. (1) The wage funds of state-subsidized sectors, organizations, and activities are defined in terms of ceilings within the framework of the approved amount of subsidies of their activities.

(2) The ceiling is set by the Council of Ministers by sector and independent organization financed out of the state budget, on the basis of the established average gross wage and approved number of employees.

Article 8. (1) Wage funds of organizations which work on the basis of a non-budget income and expenditure account are established by these organizations within the limits of their overall subsidy and the funds they have secured.

(2) Based on accountability data, the wage funds may be increased by 0.5 percent per each percent of above-plan income but not to exceed 20 percent of the wage fund approved on the basis of the nonbudgetary income and expenditure account. In the case of organizations which are not subsidized by the budget and are supported entirely with their own income wage fund increases may not exceed 30 percent.

Law on Land Ownership

91CH0791A Prague HOSPODARSKE NOVINY (supplement) in Czech 11 Jul 91 pp 1-13

["Text" of land ownership law with elucidations by Petr Liska, doctor of jurisprudence: "Law No. 229, Dated 21 May 1991, on Modifying Ownership Relationships With Respect to Land and Other Agricultural Property With Commentary on Individual Provisions"]

[Text]

Introduction

On 21 May 1991, the Federal Assembly approved a law on the modification of ownership relationships with respect to land and to other agricultural property (hereinafter referred to only as "law on land ownership"). This is another in the series of restitution and rehabilitation regulations which have been approved recently. In this connection, it is particularly necessary to recall Law No. 119/1990 Sb. [Collection of Laws] on court rehabilitations, as modified by subsequent regulations contained in Law No. 403/1990 Sb. on mitigating the consequences of some property injustices, as defined in Law No. 87/1991 Sb. on extrajudicial rehabilitations.

The law on land ownership represents an independent legal modification in the area of restitution applicable to agricultural and forestry land and related property. The justification for a special modification in this area is based primarily on the special aspects of the development of land plot rights in our country and, as a result, also on the development of land plot ownership and land management.

Questions pertaining to the development of the modification of land plot ownership in our republic are connected primarily with the implementation of two land reforms.

After the Czechoslovak Republic came into being in 1918, laws were adopted here to solve the question of land ownership, laws which we generally refer to as the First Land Reform. These involve primarily Law No. 215/1919 Sb. on the confiscation of large landholdings, as modified by later laws and other legal regulations.

After the end of World War II, several additional provisions were enacted in our country in solving questions of land ownership. In July 1947, Law No. 142/1947 Sb. on the revision of the first land reform was adopted and, in March 1948, Law No. 46/1948 Sb. on the new land reform was also adopted.

Based on the above laws, the state confiscated landholdings of more than 50 hectares from owners. As a rule, however, the state did not retain these lands, but allocated them to other citizens. A certain "fiction" of retained ownership rights pertaining to these land parcels was then supported by additional legal regulations. These were, for the most part, regulations establishing conditions for the collectivization of agriculture. They were primarily based on the need to increase the size of production entities at the price of eliminating small and medium farmers. This purpose was also supported by issued laws and other legal regulations and adopted provisions.

In the area of the agricultural cooperative movement, these were mostly Law No. 69/1949 Sb. on individual agricultural cooperatives and the Sample Statutes for Individual Agricultural Cooperatives (No. 40/1953 UL [OFFICIAL GAZETTE]), Law No. 49/1959 Sb. on individual agricultural cooperatives, and Law No. 122/1975 Sb. on the agricultural cooperative movement. The common feature of these legal regulations was primarily the obligation of members to combine their landholdings and to transfer ownership of other production facilities to the cooperative (buildings, other structures, livestock and inventory, supplies, etc.). While members retained ownership rights with respect to land plots, the remaining property passed to the cooperative. However, ownership rights to land plots were expressly restricted by law, and, as a result, became virtually meaningless. Other regulations in this area (Law No. 90/1988 Sb. on the agricultural cooperative movement and Law No. 162/1990 Sb. on the agricultural cooperative movement) then only demanded the combining of land plots, and ignored other resources.

Other landowners who did not join a cooperative were subject to other legal regulations. These were, primarily, Law No. 55/1947 Sb. on assistance to farmers in meeting their agricultural production plan, as defined in subsequent laws, which was replaced by Government Regulation No. 50/1955 Sb. on some provisions to secure agricultural production. According to these regulations, a state organ (national committee) could, in the interest of securing agricultural production, assign the land of an owner to be used by agricultural enterprises of the socialist sector, even against the will of the owner.

Law No. 123/1975 Sb. on utilizing land and other agricultural property to support production (which rescinded Government Regulation No. 50/1955 Sb.) then assigned extensive rights to agricultural organizations with regard to the land of citizens being used by agricultural organizations. At the same time, the law legalized even the illegal utilization of the land belonging to a citizen by an agricultural organization. Land plots were utilized on the basis of the right to utilize them in support of production, which was created for this purpose.

In addition to the right of utilization in support of production and the right of cooperative utilization, yet another special-purpose utilization institution was established—the right of substitute utilization. This institution was based on generally binding legal regulations, which pursued the so-called development of socialist agricultural production. Support for this development in our country required, among others, the centralization of

agricultural land into major holdings and a new organization of the land fund of cooperatives and other agricultural organizations. While retaining private ownership of land, a new utilization institution was developed—the right of substitute utilization. Toward this end, Government Regulation No. 47/1955 Sb. on provisions in the sector of economic-technical modification of land plots was published. According to this modification, economic-technical modification of land plots (HTUP) is understood to be the combining of noncontiguous and scattered land plots and the implementation of related terrain, water management, and other measures—measures which are intended to increase soil fertility and improve land management.

On the basis of this government regulation, a landowner was assigned a substitute plot of land for so-called substitute utilization in exchange for his own plot of land. Land which was taken from owners was acquired for utilization by the cooperative or by another agricultural enterprise. The owner retained ownership rights to the land, but the content of these rights was again significantly restricted. This government regulation has thus far not been rescinded even though, in practice, land parcel modifications are no longer conducted in accordance with it. A new modification, including a solution to the question of substitute utilization, awaits the passage of laws by the CNR [Czech National Council] and the SNR [Slovak National Council].

This brief excursion into the problems of the historical development of land ownership rights in our country was necessary to foster a better understanding of the modifications contained in the law on land ownership. The specificity of this area is based particularly in the retention of original ownership rights to land plots and the separation of the right to utilize them from the ownership rights, the difficulty of identifying specific parcels of land in combined holdings, and on the need for a new organization pertaining to the land fund, including breaking out the land plots of individual owners. Furthermore, it was not only necessary to rectify the injustices applicable in all areas of life, but also to rectify those injustices suffered particularly by owners of agricultural and forestry land and by efficient farmers.

Law on Modifying Ownership Relationships With Respect to Land and Other Agricultural Property, Dated 21 May 1991 (With Commentary on Individual Provisions)

The Federal Assembly of the Czech and Slovak Federal Republic, in an effort to:

Mitigate the consequences of some property injustices committed against owners of agricultural and forestry land in the period of 1948 through 1989;

Achieve an improvement in the care of agricultural and forestry land by renewing the original ownership relationships with respect to land;

Modify ownership relationships with respect to land in harmony with the interests of economic development in the countryside and in harmony with the requirements to create a better countryside and environment;

Has adopted the following law:

PART ONE

Section 1

Extent of Jurisdiction

(1) The law is applicable to:

a) land which makes up the agricultural land fund or belongs to it[1] and, to the extent stipulated by this law, also to land which makes up the forestry land fund[2] (hereinafter referred to as "land");

b) residential buildings, economic structures, and other buildings belonging to the original agricultural settlement, including built-on land plots;

c) economic structures and buildings serving agricultural and forestry production or related water management projects, including built-on land plots;

d) other agricultural property, as listed in Section 20.

(2) The law modifies the rights and obligations of owners, original owners, users, and renters of land, as well as defining the jurisdiction of the state in regulating ownership and utilization rights pertaining to plots of land.

(3) To the extent to which this law does not stipulate otherwise, legal relationships with respect to property listed in Paragraph 1 above are governed by special regulations.

Commentary

1. Land which makes up the agricultural land fund or which properly belongs to it is determined primarily on the basis of Law No. 53/1966 Sb. on the protection of the agricultural land fund, as modified by Law No. 75/1976 Sb. (the complete text was published as Law No. 124/1978 Sb.), and Decree No. 36/1987 Sb., which modifies certain details involved in the protection of the agricultural land fund.

According to Section 1, Paragraph 2, of the law on protection of the agricultural land fund, the agricultural land fund is composed of agricultural land which is being farmed (arable land, hop gardens, vineyards, gardens, orchards, meadows, pastures). The agricultural land fund also includes land which has been worked in the past and is to continue being worked, but which is currently not being worked. According to Section 1 of Decree No. 36/1987 Sb., this land is understood to be the following:

a) temporarily fallow land which is temporarily unsuitable for agricultural production, but which can again be used for this production after agricultural recultivation;

b) agricultural land which has been temporarily taken out of agricultural production;

c) agricultural land used for nonagricultural purposes for a period of less than one year, which includes the time required to restore the land to its original condition;

d) land which has been permanently taken out of agricultural production and which, according to an approved recultivation plan, is to be returned to agricultural production;

e) agricultural land which was taken out of production after the effective date of the law (1 September 1966) without a decision having been made according to law regarding this removal.

The agricultural land fund also includes land parcels which, although they do not directly serve agricultural production, are essential for these purposes. The law on protecting the agricultural land fund lists examples of this type of land as being field paths, land parcels containing facilities which are important to field irrigation, water reservoirs and ponds required by agricultural production, dams serving to protect against inundation or floods, protective terraces against erosion, etc.

In cases of doubt as to whether a part of the agricultural land fund is involved, decisions are made by the organ responsible for protection of the agricultural land fund (the okres office).

2. The forestry land fund is outlined by Law No. 61/1977 Sb. on forests. According to Section 2 of the cited law, the forestry land fund is made up of land parcels which are permanently destined to fulfill the function of forests—forestland. Forestland is identified as follows:

a) land parcels on which forest timber is grown, which serve to fulfill the function of forests (forestry stands) and land parcels from which forest growth has been temporarily removed for purposes of renewal or for purposes of establishing forest nurseries or forestry seedling plantations;

b) land parcels lacking forestry growth, which serve the forestry economy and are essential to it (forest paths, forest plot dividing cuts, areas of mountain forest depots, etc.);

c) land parcels above the tree line in high mountain areas, with the exception of parcels of land which have been built upon and their approach roads.

The appropriate state forestry administration organ can also declare that other land parcels are forestland parcels. In cases of doubt as to whether the plot of land is part of the forestry land fund, the decision is also made by the organ of the state forestry economy administration (the okres office).

3. Agricultural settlements are not expressly identified in construction-technical regulations, nor in other regulations. The Civil Code states in Section 128, Paragraph 2, that the residential part of an agricultural settlement is considered to be a family residence if, according to circumstances and the specifics of the given situation, it fulfills the conditions of a family residence, according to Section 128, Paragraph 1. In practical terms, however, the residential portion of an agricultural settlement was very frequently an inseparable component of the building complex, in terms of construction-technical terms. In addition to residential portions, this complex included economic structures, small operating units, toolsheds, etc.

4. Determination of the character of a structure is based on the building permit and the building inspection decision. In the event of doubt as to whether a specific structure falls under the jurisdiction of the law on land ownership, it will be necessary to primarily examine the building permit or the inspection approval or possibly even to call for a decision by the appropriate building office.

5. For the concept of other agricultural property, see the note applicable to Section 20.

6. The basic modification of the right to ownership is contained in Article 11 of the Listing of Basic Rights and Freedoms. The content of the ownership rights is also elaborated on in appropriate provisions of the Civil Code.

7. The outlining of the relationship between the law on land ownership and other legal regulations is based on the principle that the law on land ownership has a priority. Only if the law on land ownership does not stipulate otherwise do other legal regulations apply. From this standpoint, it is particularly necessary to judge the relationship of the law on land ownership to Law No. 78/1991 Sb. on extrajudicial rehabilitations.

Basic Provisions

Section 2

(1) Apart from the owner, other persons have the right to use the land only on the basis of agreements concluded with the owner or on the basis of an agreement concluded with the land fund.

(2) The owner of land parcels is also the owner of the crops growing on them; this does not impact the ownership rights of agricultural cooperatives with respect to crops growing on land parcels of their members in accordance with regulations governing the agricultural cooperative movement[3]. With respect to land parcels conveyed for use by contract, the owner of other than permanent stands is the user, provided no other agreement is reached with the owner.

Commentary

1. The fundamental modification of ownership rights generally is contained in the Listing of Basic Rights and Freedoms (Article 11) and in the Civil Code (Section 130 and subsequent sections). Solely in view of existing provisions in the area of land plot rights, the law on land ownership provides an opportunity for the establishment of utilization rights for the parcel of land for another person. In this respect, it considers contractual utilization to be basic. This principle cannot be considered to be without exception, particularly in regard to provisions of Section 22, Paragraph 2. Also, the right to substitute utilization, as mentioned in the introduction, is not based on a contractual agreement.

2. The fact that the owner of a plot of land is also the owner of any crops that grow on it is indisputable from the content of the ownership law. An exception are those crops growing on land parcels owned by members of cooperatives which are in cooperative utilization; ownership rights to these crops are vested in the cooperative.

3. Permanent stands are identified in Section 17 of Decree No. 182/1988 Sb. on the prices of structures, land parcels, permanent stands, compensation for establishment of the right to personal utilization of land, and compensation for the temporary utilization of land (for the Czech Republic). Permanent stands are considered to be fruit trees, grape vines, hop vines, and timber and decorative species. Other crops on the land parcel are then considered to be temporary in character.

Section 3

Land may not be transferred to the ownership of foreign exchange foreign nationals[4].

Commentary

1. The definition of a foreign exchange foreign national is based on Section 5 of the Foreign Exchange Law No. 528/1990 Sb. Foreign exchange Czechoslovak nationals are physical persons who have a residence of record in Czechoslovakia and legal entities which have their seat in Czechoslovakia. Other physical and legal entities are considered to be foreign exchange foreign nationals. A foreign exchange Czechoslovak national—a legal entity—is also considered to be a physical person—an entrepreneur—who is registered in the enterprise register. An international organization with its headquarters in Czechoslovakia, which is established in or engages in activities in the CSFR in accordance with specialized regulations, is also considered to be a foreign exchange foreign national.

2. In view of the specified jurisdiction of the law, the prohibition contained in Section 3 is not expanded to include all plots of land. However, in this regard, the provisions contained in Section 25 of the Foreign Exchange Law, prohibiting such transactions, are far more specific.

PART TWO

Section 4

Authorized Persons

(1) An authorized person is a citizen of the Czech and Slovak Federal Republic who has a permanent residence on its territory and whose land, buildings, and structures which belong to the original agricultural settlement have passed to the state or to another legal entity in the period from 25 February 1948 through 1 January 1990 by the method listed in Section 6, Paragraph 1.

(2) In the event the person listed in Paragraph 1 should die before the expiration of the time limit listed in Section 13 or in the event that person was declared dead prior to the expiration of that time limit, authorized persons, as long as they are citizens of the Czech and Slovak Federal Republic and have a permanent residence on its territory, shall be the following physical persons in the rank order listed below:

a) a testamentary heir who has inherited the entire estate, where the will was submitted during inheritance proceedings;

b) a testamentary heir who has acquired ownership, but only to the extent corresponding to his inherited share; this clause does not apply if the heir is entitled to receive only individual items or rights according to the will; in the event the testamentary heir is entitled only to a certain portion of the real estate which is subject to the obligation to release it, he is entitled only to that portion of the real estate involved;

c) the children and the spouse of the person listed in Paragraph 1, each receiving equal shares; in the event a child has died prior to the expiration of the deadline listed in Section 13, the children of the spouse shall be replacement authorized persons and, in the event any one of them has died, then their children shall be entitled to inherit;

d) parents of the individual listed in Paragraph 1;

e) siblings of the person listed in Paragraph 1 and, in the event one of them dies, that person's children are the replacement authorized individuals.

(3) In cases listed in Section 6, Paragraph 1, Letter j, authorized persons shall be those persons listed in that section; the provisions of Paragraph 2, Letters c through e, are similarly valid.

Commentary

1. Only an authorized individual according to the law on land ownership may assert their claim. However, only individuals fulfilling the conditions stipulated in the law on land ownership may become authorized individuals.

2. The original owner of land and of an agricultural settlement, which have passed to the ownership of the state or a legal entity in the period from 25 February

1948 through 1 January 1990, by the method listed in Section 6, Paragraph 1, may become an authorized person only if he is a citizen of the CSFR and has a permanent residence on Czechoslovak territory. For answers to the question of acquiring and losing citizenship, see particularly the modification contained in Law No. 194/1949 Sb. on the acquisition and loss of Czechoslovak citizenship, as detailed in subsequent regulations, and Law No. 88/1990 Sb. which modifies and augments the regulations on the acquisition and loss of Czechoslovak citizenship.

For answers to questions of permanent residence, see particularly Law No. 135/1982 Sb. on the reporting of and keeping records on the sojourn of citizens.

3. Whether the above-listed conditions are fulfilled by the original owner through the day on which the law becomes effective is not decisive. What is decisive is the fulfillment of the conditions on the day the claim is asserted in accordance with this law.

4. In the event of death or being declared dead, other stipulated individuals take the place of the original owner. These individuals must fulfill the conditions stipulated in the law on land ownership. However, it is also required that the original owner is seen as fulfilling all stipulated conditions at the time of his death or at the time of his being declared dead, that is to say, even the condition of citizenship and permanent residency.

5. The rank order of other individuals is given by the testamentary and legal heirs.

Section 5

Responsible Individuals

(1) Responsible individuals are the state or legal entities which have possession of the items involved on the day this law becomes effective, with the following exceptions:

a) enterprises having foreign property participation and commercial companies, whose partners or participants are exclusively physical persons. This exception does not apply where items have been acquired from legal entities after 1 October 1990;

b) foreign countries.

(2) Until real property is released to the authorized person, the responsible individual shall handle it like a careful manager; as of the day this law becomes effective, he cannot transfer these items or their parts and appurtenances to the ownership of another. Such legal actions are invalid. The right to compensation for damages caused by the responsible individual to the authorized individual by violating these duties remains untouched by the provisions of Section 28.

Commentary

1. The state may be a participant in civil rights relationships (see Section 21 of that law). The state enters upon such relationships on the basis of the legal equality of all participants. In such a case, state budgetary organizations act for the state in the functions of state organizations.

2. Within the meaning of the Civil Code, it is possible to consider legal entities to be organizations which have their own legal subjectivity. This will, for the most part, involve state enterprises and other state organizations, cooperative organizations, commercial companies, civic associations, etc.

3. The determination as to who should hold property in the sense of the law on land ownership will require particular scrutiny owing to the multiplicity of utilization rights in particular. During this scrutiny, the records pertaining to real estate will play an important role which will, however, not always be completely decisive, in view of the failure of certain entities to comply with reporting requirements.

4. According to Law No. 173/1988 Sb. on enterprises with foreign property participation, as modified by a subsequent law, an enterprise with foreign property participation is understood to be a legal entity engaged in economic activity which is headquartered on the territory of the CSFR, provided a foreign participant shares in its undertaking at the time of establishment or subsequent to that time.

5. Regulations for commercial companies are contained in Part Four A of the Economic Code. From these provisions, it is clear that participants or associates of the commercial company may be physical as well as legal entities (as long as the Economic Code does not exclude this provision). We are dealing with public commercial companies, companies with limited liability and limited partnerships.

6. As early as the effective date of the law, the responsible individual has certain duties assigned to them. In fulfillment of these duties, the assertion of a claim by an authorized person is not decisive.

In contrast to provisions stipulated elsewhere, the responsible person may let another have use of the real estate involved.

Section 6

Handing Over Real Estate

(1) Real estate, which has passed to the state or to another legal entity as a result of the following provisions shall be handed over to authorized persons:

a) as a result of a verdict calling for forfeiture of property, forfeiture of items or the taking of property resulting from a criminal proceeding, or possibly from a criminal administrative proceeding in accordance with

previous regulations, where the verdict was set aside in accordance with specialized regulations[5];

b) as a result of taking without compensation by methods outlined in Law No. 142/1947 Sb. on the revision of the first land reform or according to Law No. 46/1948 Sb. on the new land reform;

c) as a result of procedures in accordance with Section 453a of the Civil Code or according to Section 287a of Law No. 87/1950 Sb. as modified by Law No. 67/1952 Sb.;

d) as a result of taking without compensation by methods according to Law No. 81/1949 Sb. of the SNR on modifying legal conditions for the cattle-breeding property held by former members of urbariates, compossessorates, and similar legal formations;

e) as a result of taking without compensation by methods outlined in Law No. 2/1958 Sb. of the SNR on modifying relationships and the management of jointly used forests belonging to former members of urbariates, compossessorates, and similar formations;

f) as a result of declarations and agreements covering the payment of debts for purposes of achieving the emigration of the individual involved (so-called renunciatory proclamations);

g) as a result of the fact that a citizen, residing abroad, left real estate behind on the territory of the republic;

h) as a result of an agreement to donate the real estate, concluded by the donor under duress;

i) as a result of an auction carried out to satisfy claims by the state;

j) as a result of a court decision which invalidated an agreement on the transfer of property used by the citizen, prior to his departure abroad, to transfer the property to another, if the reason for invalidation was the fact that the individual left the country, or possibly the recognition by the participants that such an agreement is invalid; in such a case, the authorized person is the acquirer of the property in accordance with the above agreement, even though that agreement never went into effect;

k) as a result of a purchase agreement concluded under duress and under conspicuously disadvantageous conditions;

l) as a result of inheritance proceedings which took place under duress and which resulted in rejecting any inheritance claims;

m) as a result of expropriation for compensation, to the extent to which the real estate exists and never served the purpose for which it was expropriated;

n) as a result of expropriation without the payment of compensation;

o) as a result of nationalization, implemented at variance with legal provisions which were valid at the time;

p) as a result of the taking over of real estate without legal justification;

r) as a result of political persecution[6] or as a result of a procedure which violates generally recognized human rights and freedoms[7];

s) as a result of transferring real estate to the ownership of a cooperative, in accordance with specialized regulations[8].

(2) Similar procedures also apply in cases where claims for reclaiming agricultural property as a result of confiscation according to specialized regulations[9] accrue to physical persons.

(3) With respect to land which passed to the ownership of the state in accordance with Paragraph 1, Letter b, above, it is possible to release a maximum of 150 hectares of agricultural land or 250 hectares of general land, irrespective of whether the release involves a single authorized person or several authorized persons jointly.

(4) After release of the real estate, the authorized person is obligated to pay the state any arrears in the allotment price at which the property was initially acquired; similarly, this individual is obligated to return the purchase price or the compensation paid him by the state or another legal entity at the time the real estate was conveyed. The land office shall decide on the time limit for such payment.

(5) To the extent to which the real estate was encumbered by claims from financial institutions on the day it was taken over by the state—claims which are secured by the real estate and are handled in accordance with special regulations, the authorized person shall compensate the state for the sum which the state had to, thus, expend.

(6) In the event real estate passed to the ownership of a community, the authorized person has the right to assert a claim against the community, according to this law.

(7) If a person other than the state releases the real estate in question, that person can claim the return of the purchase price paid at the time the property was purchased. This claim must be asserted before the appropriate organs of the state administration of the pertinent republic.

Commentary

1. A condition for asserting a claim is the fact that the real estate passed to the ownership of the state or a legal entity through methods listed in Section 6, Paragraph 1.

The assertion of the law on land ownership in relationship with the law on extrajudicial rehabilitations stems particularly from the provisions of Section 1, Paragraph

3, of the law on land ownership and Section 1, Paragraph 4, of the law on extrajudicial rehabilitations.

2. A characteristic sign for the modifications contained in Section 6, Paragraph 1, is the fact that the real estate in question passed to the ownership of the state or a legal entity (with the exception of the case listed under Letter e). Questions pertaining to the passage of the right to utilize a piece of real estate are solved in provisions contained in Section 22 of the law on land ownership.

3. The provisions of Paragraph 3 determine the maximum amount of land which may be released. However, the maximum amount of land which an individual may own is not stipulated.

4. To a certain extent, the institution of limiting the transfer of real estate is tied in with the previously valid institution of the mortgage bond laws.

To the extent to which, in such cases, the state paid off the claims of monetary institutions which were secured in this manner and, thus, took over the debt of the creditor, the legislature requires the authorized person to compensate the state for this amount.

In view of the fact that the law on land ownership does not specifically speak, for example, of restricting the transfer of real property, it may be conjectured that the regulations also apply to previous similar institutions.

5. The ownership rights of communities are outlined particularly by CNR Law No. 172/1991 Sb. on the transfer of some property items from the holding of the Czech Republic to the ownership of communities (SNR Law No. 138/1991 Sb. on the property of communities).

However, according to the law on land ownership an obec is not expressly considered as a responsible person.

6. Outlining the jurisdiction of organs of the state administration of the republic is a matter for laws of the CNR and the SNR.

Section 7

The mitigation of several other property injustices, which came into being as a result of the validity or of the special application of some legal regulations or on the basis of other reasons and were applicable only on the territory of the Czech Republic or the Slovak Republic will be regulated by the Czech National Council or the Slovak National Council through a special law.

Commentary

A similar provision is contained in Section 32 of the law on extrajudicial rehabilitations.

Section 8

(1) Upon the proposal of the original owner, the courts can decide that he has acquired ownership rights to real property owned by, or being used by, a physical person who acquired the property from the state which, in turn, acquired the property under conditions listed in Section 6, Paragraph 1, provided that the subject physical person acquired the property either in conflict with these valid regulations or on the basis of illegal preferential treatment; this provision is applied even in relationship to persons who are next of kin, to whom the physical person in question may have transferred the property. The proposal must be asserted by 31 December 1992, otherwise these rights are extinguished.

(2) A physical person, whose ownership rights were transferred to the original owner in accordance with Paragraph 1, has a claim against the state for the return of the purchase price and for the defrayment of costs specifically expended on the real estate involved. This claim is asserted with the appropriate central organ of the state administration of the republic. In such a case, the state has a claim against the original owner for indemnification of the costs specifically expended on the real estate involved which were paid to the physical person involved in accordance with Sentence 1 of this provision.

Commentary

1. The physical person involved cannot be the responsible person. Although the court may, upon proposal by the original owner, decide on the transition of ownership rights to a piece of real estate owned by a physical person who acquired it under certain circumstances.

2. Previously valid regulations can be considered to be not only legal regulations, but regulations of an internal nature issued upon the basis of relationships involving supremacy and subordination, if they were violated by the entity upon whom they were binding.

3. The definition of the concept of next of kin is contained particularly in Section 116 of the Civil Code.

4. The definition of the term original owner is not identical with the term authorized person, in accordance with Section 4, Paragraph 1. This concept simultaneously excludes the possibility that individuals listed in Section 4, Paragraph 2, can submit proposals.

Section 9

(1) A claim shall be asserted by an authorized person with the land office and, at the same time, the responsible person shall be asked to hand over the real estate involved. The responsible person shall conclude an agreement with the authorized person regarding the handing over of the real property within 60 days of the time the request is made.

(2) The agreement is subject to approval by the land office in the form of a decision issued in an administrative proceeding.

(3) The decision of the land office to disapprove an agreement shall be reviewed at the request of the participant in the proceedings by a court. If even the court does not approve the agreement, the matter is returned to the land office for decision.

(4) In the event no agreement comes about in accordance with Paragraph 1 above, the land office shall make a decision with regard to the ownership of real estate by the authorized person.

(5) In the event there is a pressing need, the land office can impose on or forgive a substantive penalty on the real estate or possibly impose other measures to protect the environment or to protect the important interests of other owners.

(6) A decision by the land office in accordance with Paragraphs 3, 4, and 5 above is subject to court review upon proposal by the participant in the proceedings.

Commentary

1. The land office makes its decision in an administrative proceeding, that is to say, in accordance with Law No. 71/1967 Sb. on administrative proceedings (the Administrative Code).

Thus, the proposal made by an authorized person must particularly fulfill the conditions outlined in Section 19 of the Administrative Code. The Administrative Code is also applied to other procedures engaged in by the land office.

2. A challenge by the authorized person to a responsible person must fulfill the mutual conditions of a legal action in accordance with Part Four of the first Civil Code. Similar requirements also govern the agreement concluded between the authorized person and the responsible person regarding the handing over of real estate (Section 43 and subsequent sections).

3. The review of the decision by an administrative organ (the land office) in a court matter in accordance with existing regulations is possible particularly on the basis of Sections 244 through 250 of the Civil Judicial Code.

4. For questions of defining the concept of substantive penalty (burden), see particularly Section 135b and subsequent sections of the Civil Code.

5. Land offices shall be established and their authorities outlined by laws adopted by the CNR and the SNR.

Section 10

(1) Administrative fees related to the handing over of real estate are not assessed.

(2) An authorized person who is asserting his rights according to this law against a responsible person is exempt from paying court fees.

(3) Essential costs connected with property appraisal, identification of land parcels, and surveying of land parcels are paid by the state.

Commentary

1. The provisions of Section 10, Paragraph 2, regulate the exemption from court fees for authorized persons engaged in asserting a claim against a responsible person according to this law. It is not completely clear which cases the legislators had in mind. In any event, decisions are to be made by the land office. Its rulings are reviewable by the courts. However, in this proceeding, the authorized person is not asserting any rights against the responsible person, but the proceedings are review-type proceedings. In the event Section 8 is applied, this again is not a proposal by the authorized person and the proposal is not aimed against the responsible person.

2. The obligation to pay the costs connected with appraisal, with the identification of individual parcels of land, and with surveying the parcels of land passes to the state. The method and realization of this provision should be the object of special legislation which would, simultaneously, outline the jurisdiction of organs in this sector.

Section 11

(1) Parcels of land or parts of parcels of land may not be handed over in the event that

a) the right to personally utilize the parcel had been established, with the exception of cases where such rights were established under circumstances listed in Section 8;

b) the land parcel contains a cemetery;

c) the parcel of land had been built on after passing to or being transferred to the ownership of the state or another legal entity; it is possible to release the land parcel, provided the structure upon it does not interfere with the agricultural or forestry use of the parcel of land;

d) an allotment garden community or a cottage community has been established on the land involved[10];

e) physical training and sports facilities exist on the parcel of land.

(2) In cases listed in Paragraph 1, the authorized person shall have transferred to it, free of charge, other plots of land owned by the state which are of appropriate size and quality as were the original land plots and, to the extent to which this is possible, these transfers shall be in the same community in which the predominant portion of the original land plots are located, provided the authorized person so agrees.

(3) In the event that, according to special regulations and after the transfer or passage of the property to the state or to another legal entity, limited use was made of the land parcel because the land or part of the land is destined for national defense[11] or for the extraction of minerals[12], or

if, in accordance with specialized regulations[13], it became part of the forestry land fund in a national park or if it is on the territory of the state natural reservation, or is the location of a protected find, a protected park, a protected garden, a protected study area, a hygienic strip to protect water resources of the first degree or a protected natural formation, or if the property is part of an important landscape element, it is up to the discretion of the authorized person whether they will demand the handing over of the original parcel of land or whether they would agree to the transfer of another parcel of land owned by the state. To the extent to which the authorized person requests the transfer of another parcel of land, the appropriate proceedings are outlined in Paragraph 2.

(4) A residential structure, an economic building, and any other structure belonging to the original agricultural settlement cannot be handed over in the event that fundamental rebuilding of the structure has caused it to lose its original construction-technical character in such a manner that it is no longer relevant to the object of agricultural production.

(5) A piece of real estate which is declared to be a national cultural treasure may not be handed over until such times as laws regulating the administration and protection of cultural treasures are adopted.

Commentary

1. The outlining of the concept of, the method of, and conditions for establishing the right to personal utilization are the subjects of provisions contained in Section 198 and subsequent sections in the Civil Code.

2. The handling of cases where land plots have been built upon may, in practice, cause difficulty. Cases in which the land parcel houses a principal structure which has already been completed or on which a decision to mortgage this structure was already issued are simple. In cases where construction activity had not reached this stage on the land parcel, the courts consider a built-upon parcel also to be a parcel upon which construction of the principal structure was begun on the basis of the building permit. However, the degree of uncompleted construction must be such that the overall shape and dispositional solution of the structure following its completion must be clearly discernible.

3. Provisions of Section 11, Paragraph 1, make it possible to withhold a portion of a plot of land. This means that, in a specific case, the physical division of a parcel of land into two or more parts can occur (to the extent to which the nature of things so permits). The appropriate geodetic center must be brought in to accomplish a geometric division.

4. In cases in which it is impossible to hand over a parcel of land or a portion of that parcel, the authorized individual has the right to claim another comparable parcel of land. The claim does not arise against a community, but against the state. An agreement regarding the cost-free transfer of ownership to a land parcel should be concluded with the authorized person by the appropriate land fund (Section 17).

5. The term "construction-technical character of a structure" is not used in the building law or in any implementing regulations. The purpose for which the structure is used is based primarily on the building permit or upon the mortgage decision. Changes in the method of using the structure are permissible only following prior reporting of this fact to the building office which shall make appropriate decisions or order new mortgage proceedings. However, it is not always possible to connect a change in the utilization of the structure involved with a change of a construction-technical character of the building. In individual cases, it will be necessary to eliminate doubts by requesting that a position be taken by the appropriate building office.

6. For definition of the term national cultural treasure, see particularly CNR Law No. 20/1987 Sb. on care for state historical monuments (SNR Law No. 27/1987 Sb.).

Section 12

Parallel Claims

In the event of parallel claims by authorized persons in accordance with Section 6, Paragraph 1, the right to have original real estate handed over shall be vested in that person who lost ownership as a result of the unilateral action of the state. If several authorized persons lost ownership by this method, the right to restitution shall be vested in the individual who was the first to lose ownership rights, to the extent to which they do not agree otherwise. Other authorized persons in such a case have the right to have the property transferred in accordance with Section 11, Paragraph 2, or to financial compensation.

Commentary

1. Parallel claims according to the law on land ownership anticipates the assertion of the rights of various authorized persons (basing their claims on various facts according to Section 6, Paragraph 1) to the same piece of real estate. The possibility of such a parallel claim is based primarily on the fact that land parcels taken over by the state had been allocated to other citizens.

2. In the event a piece of real estate was handed over to an authorized person, but in the event this was accomplished in conflict with the rules contained in this provision, it is possible to assert the proposal in court, in accordance with Section 13, Paragraph 2, of the law on land ownership.

Section 13

Deadlines for Asserting Claims

(1) An authorized person may assert the right to have real estate handed over to them in accordance with Section 6 above, until 31 December 1992. In the case

listed in Section 6, Paragraph 1, Letter a, above, the 18-month deadline does not begin until the effective date of the decision rescinding the verdict, if the decision is made after the effective date of this law. If the rights are not asserted within the time limit stipulated, they expire. The deadlines for submitting written proof in proceedings before a land office are governed by generally applicable regulations on administrative proceedings.

(2) In the event an item of real estate has been handed over in accordance with Section 9, individuals whose claims, which were properly asserted within the time limit stipulated in Paragraph 1, were not satisfied may assert these claims in court against individuals to whom real estate has been turned over within six months from the day of expiration of the deadline listed in Paragraph 1.

Commentary

1. The beginning of the time limit period must be set differently in cases in which the decision became effective after the effective date of the law.

2. With respect to the extinguishment of the right as a result of failure to assert it in sufficient time, see Section 99 of the Civil Code on preclusion.

Compensation

Section 14

(1) An authorized person is entitled to compensation for residential buildings, economic buildings, and other structures which cannot be handed over according to this law. Similarly, an authorized person is entitled to compensation for a plot of land which is not returned in accordance with this law and for which another plot of land has not been made available in return.

(2) In the event a residential structure, an economic building, or any other structure which is to be turned over, has substantially increased in value so that the price determined on the day this law becomes effective is greater than the price of the structure at the time the building was taken over by the state or by another legal entity, it is at the discretion of the authorized person whether he will take over the building and compensate the responsible person for the price difference or request compensation.

(3) In the event a residential building, an economic building, or any other structure which is handed over has lost value to the extent that the value determined on the day this law becomes effective is substantially lower than the price of the original building at the time it was taken over by the state or another legal entity, it is at the discretion of the authorized person whether he will take over the building and request compensation equal to the difference between the price of the building at the time it was taken over by the state or another legal entity and the price on the day this law becomes effective or whether he will demand compensation.

(4) Procedures outlined in Paragraph 2 are applicable also to cases where the residential building, economic building, or other structure have become part of another structure or building.

(5) Prices are determined according to pricing regulations valid on the day this law becomes effective.

(6) In the event an authorized person has acquired ownership of real estate through allocation from the state, compensation for real estate as outlined in Paragraph 1 shall not exceed the allocation price.

Commentary

1. It will be necessary to judge the increase or decrease in value of structures. For purposes of the provisions in Section 14, Paragraphs 2 and 3, just any kind of valuation (devaluation) is not decisive, but rather only substantial valuation (devaluation). While the expression of the status of a structure in an expert opinion in accordance with valid regulations is a matter for a court expert, determination of the extent of valuation (devaluation) in specific cases from the standpoint of the law on land ownership will primarily be a matter of agreement between the authorized person and the responsible person, or possibly be subject to a court decision.

2. Price regulations are represented by Decree No. 162/1988 Sb. on the price of buildings, plots of land, permanent crops, compensation for establishing the right to personally utilize plots of land, and compensation for the temporary use of plots of land, as modified by subsequent regulations for the territory of the Czech Republic (Proclamation No. 205/1988 Sb., as modified by subsequent regulations for the territory of the Slovak Republic).

Section 15

(1) An authorized person is entitled to compensation for a permanent crop (stand) which was located on a plot of land at the time it was taken over by the state or another legal entity, provided that, at the time the plot of land is returned, there is no other comparable crop on it.

(2) If the plot of land, which is to be handed over according to this law, does have a permanent crop or stand on it, although, at the time it was taken over by the state or by another legal entity the plot of land did not have a comparable permanent crop or stand on it, it is at the discretion of the authorized person whether he will take over the plot of land and provide financial restitution or whether he will request the handing over of another plot of land; in such a case, proceedings are outlined in Section 11, Paragraph 2, of this law, provided the parties to the agreement do not agree otherwise.

(3) Prices are determined in accordance with pricing regulations valid on the day this law becomes effective.

Commentary

1. For the concept of permanent crop, see explanations for Section 2.

2. The comparability between crops shall, in individual cases, be given particularly by the comparability of their prices. Prices are determined according to valid pricing regulations. On the question of valid pricing regulations, see explanations applicable to Section 14.

Section 16

(1) The state will pay compensation for plots of land which are not handed over according to this law and for which no replacement plot of land has been made available. The magnitude of the cash compensation is to be regulated by the government of the Czech Republic and the government of the Slovak Republic by decree. Cash payments are made only to the original owners of handed-over items.

(2) Other compensation according to Sections 14 and 15 will be paid by the legal entity (the legal successor) which has possession of the real estate or which held the real estate at the time of its extinguishment or which transferred it to an individual which is not handing over the pertinent real estate in accordance with this law.

(3) An authorized person shall demand compensation at the latest by the time limit listed in Section 13. In the event the right to compensation depends on a decision by the land office or the court, this time limit expires six months from the day the decision becomes legally effective.

(4) Compensation is paid to the authorized person within one year of the day the demand is submitted. Compensation consists of items which the responsible person owns for purposes of providing compensation, or of a share in the wealth of that person, up to the value of the original real estate and permanent crops, provided the parties to the agreement do not agree otherwise.

(5) The method of compensation must be agreed upon or settled within one year of the submission of a written demand by the authorized person, provided the claim has not been satisfied sooner. With the agreement of the authorized person, it is possible to settle obligations in that person's favor even after this deadline.

Commentary

1. The provisions of Section 16, Paragraph 1, speak of the possibility of providing cash only to the original owners. It can be judged that, even in this case, the original owner must fulfill the criteria outlined in Section 4, Paragraph 1.

2. It will be necessary for appropriate legal regulations under the jurisdiction of the Czech Republic and the Slovak Republic to eliminate shortcomings consisting particularly of the fact that an appropriate state organ has not been designated for the submission of applications, nor has the method for compensating been outlined in cases in which cash is not paid in compensation.

3. On the question of the legal power of decisions in accordance with Section 16, Paragraph 3, see particularly Section 52 of the Administrative Code and Section 159 of the Civil Judicial Code.

4. In view of the fact that the law on land ownership does not speak to more of the details regarding the demand to hand over compensation, it can be generally stated that provisions of the Civil Code dealing with legal actions (see explanations pertaining to Section 9) apply.

5. The law on land ownership makes it possible to agree on a method of compensation and a deadline for agreement between an authorized person and a responsible person, which agreement may also regulate some matters differently than the way they are listed in the law.

PART THREE

Section 17

Land Funds

(1) Real estate owned by the state, as listed in Section 1, Paragraph 1, is administered by legal entities created on the basis of the laws of the Czech National Council and the Slovak National Council (hereinafter referred to as "land funds"), with the following exceptions:

a) land parcels housing cemeteries;

b) land parcels which are destined for use in national defense[14];

c) land parcels which are destined for the extraction of minerals[15];

d) land parcels which are protected in accordance with special regulations[16];

e) land parcels which are part of the forestry land fund, which are exempt from the procedures outlined in Section 6, Paragraph 1.

(2) Where this law does not otherwise stipulate, the land funds shall proceed in accordance with special regulations[17] in transferring state-owned real property. Until a privatization project has been approved or in conjunction with it, the land fund can assign real property to be used by other persons.

(3) In cases where more than one physical entity is interested in real estate owned by the state, existing users have priority in proceedings outlined in Paragraph 2, followed by independent farmers. Of any other interested parties, preference is given to individuals permanently residing in the community in whose cadastral territory the real estate in question is located.

(4) In cases of doubt as to whether the provisions of this law apply to the real estate in question, decisions are made by the appropriate central organs of state administration of the republic.

Commentary

1. The establishment of land funds and the definition of their activities is a matter for the laws of the CNR (SNR). The law on land ownership stipulates the jurisdiction of these funds only in outline form.

2. It is necessary to draw attention to the fact that the funds are not intended to be organs of state administration, but legal entities. From this, it is possible to conclude that they are not authorized to engage in state administrative activities.

Section 18

(1) If the owner of an item of real estate is not known, the land fund is authorized to let suitable interested parties use the real estate; fees paid for this utilization constitute revenue for the fund until such times as the owner asserts his right to this piece of real estate.

(2) If the owner asserts his right to the real estate in question, the land fund shall terminate its agreement with the tenant by 1 October of the current year by giving one year's notice, provided no other agreement is reached with the owner.

Commentary

The land fund will administer not only land parcels owned by the state, but also land parcels whose owner is unknown, and it will do so on its own account and until such times as the owner of the land parcel comes forward and documents his right of ownership.

Section 19

Land Plot Modifications

(1) Land plot modifications are changes in the arrangement of land plots in certain territories, implemented for purposes of creating unitized economic land components in accordance with the requirements of individual landowners and with their approval and in line with social requirements for the creation of landscape areas, the environment, and capital construction.

(2) Decisions regarding the implementation of land modifications and related exchanges or transfers of ownership rights, decisions regarding the determination of plot boundaries or the imposition of possible lifting of substantive liens on the specific land plots involved, are made by the land office on the basis of an agreement between owners. In the event the owners fail to come to an agreement, the land office shall render its decision in accordance with conditions stipulated by the law. The decisions by the land office are subject to review by a court at the proposal of a participant in the proceedings.

(3) Laws adopted by the national councils govern the proceedings involved in land modifications.

Commentary

1. A prerequisite for the realization of the law on land ownership in practice particularly involves the identification of land plots owned by individual owners, as well as the new organization of the land fund. Toward this end, it is no longer possible to implement land modifications in accordance with hitherto valid Government Decree No. 47/1955 Sb.

2. The process of implementing land modifications will be regulated by a law of the CNR (SNR). An important role in the realization of this process will be played by the land offices. This will primarily involve their reorganization, the implementation of individual measures, including the issuance of the necessary decisions.

3. New types of land modifications cannot be undertaken without changes in the ownership laws affecting individual entities, particularly without exchanging specific land plots according to the requirements of the owners. Exchanges of ownership rights will be decided on by land offices or by the courts.

PART FOUR. Special, Transitory, and Final Provisions

Section 20

Compensation for Livestock and Inventory

(1) For purposes of assuring agricultural production, the original owner of livestock and inventory, as well as of supplies, has the right to be compensated to the extent to which he contributed them to an agricultural cooperative or to the extent to which he was deprived of these facilities in the period between 25 February 1948 and 1 January 1990. In the event the original owner has died or has been declared dead, another authorized person as listed in Section 4, Paragraph 2, has the right to demand compensation in order to assure the continued operation of agricultural production.

(2) The legal entity which took over matters or its legal successor shall have the duty of granting compensation in accordance with Paragraph 1, within the period of one year, provided the parties to the proceedings do not agree otherwise. In the event this legal entity has compensated the state for the value of the livestock, equipment, and supplies, it has the right to be refunded for this sum by the state; this claim may be asserted before the appropriate central organ of state administration of the republic within a period of one year from the time the compensation was paid.

(3) Compensation will be in the form of payment in kind of the same or comparable type, quality, and quantity according to that portion of the real estate which was taken over in support of agricultural operations; if this is not possible, compensation will be afforded in services designed to support agricultural production, or possibly a share in the wealth of a legal entity, as listed in

Paragraph 2, up to the value of the items taken in prices effective on the day this law goes into effect, or can be compensation in another form. Any compensation for livestock, equipment, and inventory paid prior to the effective date of this law is subtracted from the established compensation. In case there is no agreement, a decision is made by the courts upon the proposal of one of the parties involved.

(4) The right to compensation becomes extinguished if it is not asserted within the time limits stipulated in Section 13.

(5) The government of the Czech Republic and the government of the Slovak Republic shall determine the method of computing compensation for items listed in Paragraph 1 where it is impossible to prove that these items were taken or were contributed to the cooperative or where it is not possible to determine their current value.

Commentary

1. The original owner according to Section 20, Paragraph 1, is not identical with the authorized person according to Section 4, Paragraph 1.

2. The concepts of livestock and equipment and supply inventory are defined in the "Sample Statutes of Unified Agricultural Cooperatives" (No. 40/1953 UL). According to Article 5, livestock and equipment inventory was considered to be draft animals (horses and oxen) and other economic livestock, farm machinery (seed drills and mowers, threshing machines, blowers, and other machinery required for purposes of joint farming), vehicles, and tools. According to Article 7, a member was obliged to contribute seed and seedlings to the joint farming operation according to the size of his land and the fodder supplies which will be required by the time of the next harvest and which reflect the planned numbers of his livestock holdings. The extent and type of items which were contributed at the time of joining the cooperative or which were confiscated from an owner on other occasions gradually changed over time. Regulation in individual detailed cases was then entrusted particularly to the cooperative's own statutes or was guided by the nature of the case itself.

2 [as published]. The obligation to combine livestock and equipment inventory was also regulated by Law No. 49/1959 Sb. and by Law No. 122/1975 Sb. Later laws on the agricultural cooperative movement no longer contain this requirement.

3. The confiscation of livestock and equipment inventory was also made possible by Government Decree No. 50/1955 Sb.

4. The deadline for compensation is set for one year. In view of the absence of more detailed language, it can be assumed that the beginning of the time period must be connected with the submission of an application for compensation. However, the duration of the time limit can, by agreement, be different from that stipulated in the law on land ownership.

Section 21

In the event there are several authorized persons and only some of them assert their right to restitution, the entire matter subject to restitution is handed over to them.

Commentary

1. Section 21 indicates that the shares of those authorized persons who do not assert their claim within the time limit stipulated by law are added to the shares of those persons who have successfully asserted their claim.

2. Use of Section 13, Paragraph 2, in such cases is impossible, particularly because the claim was not asserted within the stipulated time limit.

Section 22

Extinguishment of Some Utilization Rights

(1) On the day this law becomes effective, the following rights to the property, as listed in Section 1, Paragraph 1, become extinguished:

a) the right to cooperative utilization of combined land plots of owners who are not members of an agricultural cooperative[18];

b) the right to utilize the land and other agricultural property to support production[19];

c) the right to utilize the land to support forestry production and other forestry functions[20]

d) the right to the cost-free use of ponds[21];

e) the right to permanently utilize real estate owned by the state[22];

f) the right to manage real estate owned by the state[23].

(2) In the event the existing user and owner have not reached any other agreement, the day on which this law becomes effective or the day the real estate was handed over in accordance with Part Two of this law marks the beginning of a landlord/tenant relationship between them, which can be canceled by 1 October of the current year. The deadline for giving notice is one year, provided no other agreement is reached; in the event the land plot is not accessible to the owner, the notice period cannot terminate before it is possible to implement land modifications. In the event the authorized person is entitled to receive buildings and structures or compensation in accordance with this law, the notice deadline, when giving notice to a tenant, may not terminate before this compensation is settled. In 1991 and 1992, owners may terminate tenant relationships by 1 October 1991 or 1 October 1992 for purposes of engaging in agricultural

production by delivering the termination notice at the latest one month prior to that day.

(3) If the land plot houses an allotment garden or weekend hut community, the termination notice deadline ends on the day the right to use the land plot temporarily is to expire. The tenant has the right to have the rental period extended for an additional 10 years, if the parties do not agree otherwise. For the duration of the rental period, the tenant has a preemptive right to purchase the plot of land. The magnitude of the rental payment and the purchase price is governed by the quality of the land and the culture of the land at the time the utilization right came into being. The provisions of Section 21 of Decree No. 182/1988 Sb. on the prices of structures, land plots, permanent crops, compensation for establishing personal utilization rights on land plots, and compensation for the temporary utilization of land plots, as modified by subsequent regulations, and Section 21 of Decree No. 205/1988 Sb. on the prices of structures, land plots, permanent crops, compensation for establishing personal utilization rights on land plots, and compensation for the temporary utilization of land plots, as modified by subsequent regulations, permitting an increase in the established prices are not applicable in this case.

(4) An owner of a land plot listed in Paragraph 3 has the right, within three years of the effective date of this law, to request the land fund to exchange the subject land plot for another plot owned by the state. The exchange of land plots is accomplished to reflect the appropriate size and quality of the original land plot, and should, to the extent possible, be located in the same cadastral territory.

(5) The tenant is entitled to utilize the land plot in harmony with its designation, in accordance with the regulations on real estate records. He is obligated to handle the utilized real estate with the care appropriate to a good farmer and, after the rental period terminates, to return any buildings and structures in a state which is reflective of ordinary use.

Commentary

1. The use relationships listed in the law are extinguished. These are cases in which real estate was being used by a person who was different from the owner, frequently even against the owner's will. The right to utilize was free of charge and significantly restricted the content of ownership rights. The extinguishment of the right to utilize, however, need not always be connected with the extinguishment of the right to utilize land plots, depending on specific circumstances.

2. A landlord/tenant relationship comes into being after the extinguishment of the utilization right, directly on the basis of the law. However, the parties to this relationship can agree otherwise. The establishment of a landlord/tenant relationship is based on the law, even in cases where the real estate has been handed back in the legal sense of the word.

3. The law on land ownership regulates at least the fundamental questions of the landlord/tenant relationship with regard to the fact that this relationship is not based on an agreement. However, the possibility that the parties may conclude an agreement and may agree upon differing conditions is not excluded.

4. Plots of land, which a legal entity had the right to use, and which rights are being rescinded by the law on land ownership may be retained for temporary utilization until the day this law becomes effective. Where allotment garden communities or weekend hut communities have been established on such land plots, any notice which is given triggers the termination of the notice deadline on the day the right to temporary utilization of the land plot was to terminate. In this case, confusion can arise if the agreement for temporary utilization had been concluded to run for an indefinite period of time. It is possible to favor the view that, in such cases, it will be essential to adhere to the termination deadline listed in the agreement.

5. For the period of his tenancy, the tenant is granted a preemptive purchase right. Here, in the event the owner decides to sell the land plot, the tenant would have to be the first person to whom the owner offers the plot for purchase.

6. The magnitude of the rental is decided in accordance with the quality of the land and the type of land at the time the right to use it temporarily was established. In other words, any cultivation measures and measures designed to improve the land during the period of temporary utilization are ignored. The same method is applied to determine the value of the land in the event it is sold to the tenant. Moreover, increasing prices determined in this manner by methods listed in pricing regulations is not permitted.

Section 23

An owner of a residential or economic building which has been eliminated during the period during which it was used by an organization as a result of special regulations[24] is also entitled to compensation according to Sections 14 and 16 of this law. In the event this building was eliminated by a legal entity other than the state, the owner has the right to financial compensation, to be asserted against that legal entity, provided the parties do not agree on another method of compensation.

Commentary

1. An organization (the state) could remove a structure on the basis of previously valid legal regulations, as well as in conflict with them. For example, Section 2, Paragraph 4, of Law No. 123/1975 Sb. allowed the removal of a structure owned by an individual under certain circumstances.

2. The question whether it is possible to consider cases in which buildings were extinguished as a result of the fact

that they were not properly cared for and maintained, as being removed buildings in the sense of the law, is more complicated. From the nature of things, it is possible to judge that such cases may be incorporated in the provisions of Section 23.

Section 24

Compensation for Permanent Crops

(1) In the event that permanent crops have grown on land parcels during the period during which they were used by agricultural or forestry organizations according to specialized regulations[24], they become the property of the landowner, effective on the day the right to utilize the land terminates; however, the user of the land is entitled to the usufruct of the property for the duration of the time he utilizes it.

(2) In the event that other comparable crops were not set out on the land plot prior to the time it was taken over for use by an agricultural or forestry organization, the user has the right to be compensated for the value of newly set out permanent crops at prices effective on the day this law goes into effect.

(3) Upon the proposal of the owner, who is expected to compensate the existing user for the value of permanent crops according to Paragraph 2 above, the land office will exchange his land plot for another land plot owned by the state. In such a case, the obligation to provide compensation for the value of permanent crops passes to the state.

(4) If, by the day the right to utilize the land plot terminates, it does not contain any comparable permanent crops, but if such crops were present on the day the right to utilize the plot came into being, the land fund will, at the proposal of the owner, exchange his plot of land for another plot of land owned by the state, which has comparable permanent crops on it; in the event an exchange is not possible, the owner has the right to be financially compensated for the difference between the costs of permanent crops, valid on the day on which this law goes into effect.

Commentary

1. For definition of the term permanent crops, see particularly explanations accompanying Section 2.

2. The extinguishment of the utilization right in accordance with special regulations is connected with the development of ownership rights by the owner of the land plot to permanent crops growing on the land. For the duration of the time such plots are used by a person other than the owner, however, the owner cannot realize his rights to the usufruct from these crops.

3. The comparability of crops is based primarily on the determination of their price according to the same price regulations.

4. On the question of price regulations, see particularly the explanations accompanying Section 14.

The Rights of Owners and Users of Buildings and Land Plots

Section 25

(1) The owner takes on the rights and obligations of a renter, based on the agreement on turning over and taking over the rental of a plot of land or from the rental agreement covering a nonresidential area in the real estate parcel which has been taken over.

(2) The existing users of apartments, plots of land, and nonresidential areas in real estate which have been taken over and which serve the following purposes, have the right to have the owner conclude an agreement on using the apartment, the plot of land, or renting the nonresidential area involved:

a) activities of diplomatic and consular missions;

b) provision of health and social services;

c) education;

d) operation of cultural and physical fitness facilities;

e) work rehabilitation and the employment of handicapped persons.

In such cases, the owner cannot terminate the agreement prior to the expiration of 10 years from the day this law goes into effect, provided the parties do not agree otherwise; this obligation passes to all other owners within the stipulated time.

(3) In the event the owner fails to agree with the user of an apartment, a plot of land, or a nonresidential area listed in Paragraph 2 above regarding the size of the rental and the conditions for its payment, the decision regarding the magnitude of the rental shall be made by the appropriate organ of state administration, in accordance with generally valid pricing regulations.

Commentary

1. The provisions of Section 25 resolve the question of the legal succession with respect to the listed relationships. The owner is bound by the agreements made by his legal predecessors and the opportunity to change these agreements is given either by a closed agreement or by valid legal regulations dealing with this subject.

2. The provisions of Section 25, Paragraph 2, restrict the content of the ownership law in the public interest. At the same time, they adjust the conditions under which the listed restrictions are imposed. The shortcomings contained in the law on land ownership must be replaced primarily by a generally valid modification, applicable in these cases.

Section 26

(1) Section 9, Paragraph 2, of Law No. 116/1990 Sb. on renting and subleasing of nonresidential areas is hereby amended by the insertion of a new sentence under Letter i, which reads as follows:

"i) this provision deals with renting nonresidential areas in real estate which has been transferred to the original owner in accordance with Law No. 229/1991 Sb. on the modification of ownership relationships with respect to land and to other agricultural property."

(2) Upon the proposal of the owner of a residential building which is part of an agricultural settlement, asserted within a period of three years from the effective date of this law, the appropriate organ shall rescind the right to utilization of the dwelling unit or will make a decision regarding vacating it in the event it is required by the owner for his own use and for the use of his next of kin and if they are engaged in agricultural production.

Commentary

1. If the handed-over real estate is a rented nonresidential area within real estate transferred to the original owner, the above augmentation of the law makes it possible to terminate a rental agreement for a specific time prior to the expiration of that time. This involves an improvement in the standing of the owner who would, as a result of legal provisions outlined in Section 25 of the law on land ownership, be restricted in the execution of his ownership rights by the rental agreement.

2. The reason for a court-ruled termination of the right to utilize an apartment in a residential building belonging to an agricultural settlement is not only the fact that the owner needs the apartment for himself and for his next of kin, but at the same time, it requires that agricultural production be engaged in.

Section 27

(1) A user of an apartment or a nonresidential area, who performed modifications in harmony with building regulations at his own expense which resulted in increasing the value of the apartment or the nonresidential area, is entitled to compensation for the value increase if his right to use these improvements is terminated.

(2) If the apartment or nonresidential area has been devalued by the day on which the right to utilize these facilities is terminated by more than the amount reflecting ordinary wear and tear, the user of these areas is obligated to compensate the building owner for this devaluation.

(3) Compensation is set in accordance with pricing regulations valid on the day the right to use facilities is terminated.

Commentary

1. The justification for compensation according to the provisions of Section 27 is any kind of valuation (devaluation) of utilized residential or nonresidential areas at the moment this use is terminated. It is, thus, not a condition based on substantial changes.

2. The pricing regulations effective on the day this law becomes effective are decisive with respect to judging the extent of changes.

Section 28

The responsible person may not assert any financial or other claims connected with the requested handing over of items against the authorized person. Similarly, the authorized individual who has items handed over to them may not assert any other claims connected with the handed-over items against the responsible person than those which are listed in this law.

Commentary

The adoption of Section 28 makes it impossible to assert any extralegal claims against another entity. For example, it is not possible to demand compensation for maintaining structures or for their nonsubstantial devaluation, or even compensation for temporary utilization of the real estate involved, etc.

Section 29

Church Property

Property which was originally owned by the church, by a religious society, by orders and congregations cannot be transferred to the ownership of other persons until laws dealing with this type of property have been adopted.

Commentary

Apart from the already approved Law No. 298/1990 Sb. on modifying some property relationships of religious orders and congregations and the Archbishopric of Olomouc, other laws in this area are being prepared.

Section 30

For procedures in accordance with Part Two of this law, property identified in Section 1, Paragraph 1, is considered to be also property which had been used for purposes identical with those at the time the ownership rights were taken away from the original owner.

Commentary

1. According to Section 30, the decisive factor permitting the application of Part Two of the law is not the normal purpose of utilizing the property involved, but the fact that, at the time of confiscation, the property was used for purposes listed in the law on land ownership (Section 1, Paragraph 1).

Section 31

The provisions of Part Two and of Section 20 cannot be applied in cases where property was acquired by persons deemed unreliable by the state or as a result of racial persecution during the period of captivity.

Commentary

1. For definition of persons deemed unreliable by the state, see particularly the provisions outlined in Presidential Decree No. 5/1945 Sb. on the invalidity of some property legal negotiations during the time of captivity and on the national administration of property values owned by Germans, Hungarians, traitors and collaborators, and some organizations and institutions.

2. The period of captivity is understood to have been the period from 30 September 1938 through 4 May 1945 (provisions of Presidential Decree No. 11/1944, Central Gazette of Czechoslovakia, and Government Regulation No. 31/1945 Sb., which stipulates the end of the period of captivity with respect to a set of regulations covering the renewal of legal order).

3. Racial persecution on our territory impacted primarily Jews and Gypsies.

Section 32

Special Provisions Regarding Land Reforms

As of the day this law becomes effective, provisions of Law No. 215/1919 Sb. on the confiscation of large landholdings, as modified by subsequent regulations contained in Law No. 142/1947 Sb. on the revision of the first land reform and elaborated later in regulations contained in Law No. 46/1948 Sb. on the new land reform, shall not be used.

Commentary

The purpose of the provisions of Section 32 is to make it impossible, even theoretically, to make use of laws on land reforms during the present period. This is primarily a guarantee of the inviolability of land ownership rights and other ownership rights of physical persons—something which is guaranteed also by other legal regulations.

Section 33

(1) With regard to the property held by agricultural cooperatives, priority treatment will be accorded to claims stemming from laws which modify the mitigation of consequences inherent in some property injustices[25] and as a result of this law. A special law will modify the method of determining membership shares, the basic membership deposit, or other property participation involving the property of agricultural cooperatives; agricultural cooperatives may not settle with their members until statutes which have been adapted to these special laws have been adopted.

(2) Agricultural cooperatives may not transfer their property to the ownership of legal or physical entities, unless this property involves delivery of products, the performance of work services, or other services (normal management) within the framework of the activities of the cooperative.

(3) Agricultural cooperatives may not use their property to participate in entrepreneurial activities of other legal entities until such times as the special law listed in Paragraph 1 is adopted.

(4) Restrictions in accordance with Paragraphs 2 and 3 do not apply to satisfying claims based on laws which regulate the mitigation of consequences of some property injustices[25] and this law.

(5) Restrictions according to Paragraphs 2 and 3 are also applicable to property entrusted to a cooperative enterprise[26] which has been combined into a joint enterprise and to property created by these legal entities, provided the property in question is not excluded in accordance with Section 5, Paragraph 1, Letter a.

(6) Exceptions with respect to provisions contained in Paragraphs 2, 3, and 4 may, in justified cases, be granted by the government of the Czech Republic or the government of the Slovak Republic. A granted exception serves to replace a permit in accordance with special regulations[27].

Commentary

1. Agricultural cooperatives are permitted to engage only in customary management and transfers of property implemented for purposes of satisfying restitutional claims.

2. For definition of cooperative property, see particularly Section 5 of Law No. 162/1990 Sb. on the agricultural cooperative movement.

3. The object of cooperative activity is one of the obligatory matters listed in the statutes of the cooperative. The object of activity is recorded in the register of enterprises.

4. For an outline of the concept of the enterprise register, see particularly Section 108, Paragraph 1, of the Economic Code.

5. Exceptions from the provisions of Section 33, Paragraphs 2, 3, and 4, may, in individual cases, be granted by the government of the Czech Republic (Slovak Republic). The granting of exceptions may be considered primarily for purposes of establishing an enterprise with foreign property participation, something which is indirectly indicated by the language of the second sentence in Section 33, Paragraph 6. However, the law does not specifically exclude the granting of exceptions in other cases.

Section 34

Rescinding Provisions

The following are rescinded:

1. Law No. 123/1975 Sb. on utilizing land and other agricultural property to support production, as modified by later regulations;

2. Sections 12 through 19 of Law No. 61/1977 Sb. on forests;

3. Section 4 of Law No. 102/1963 Sb. on fisheries;

4. Section 50, Paragraphs 2, 4, and 5, and Section 51 of Law No. 16/1990 Sb. on the agricultural cooperative movement;

5. Law No. 81/1949 Sb. of the SNR on the modification of legal relationships governing the cattle-breeding property of former urbariates, compossessorates, and similar legal formations;

6. Law No. 2/1958 Sb. of the SNR on modification of the relationships and managing joint utilized forest belonging to the former urbariates, compossessorates, and similar formations.

Section 35

Effective Date

This law becomes effective on the day it is proclaimed.

Commentary on Sections 34 and 35

1. The rescinding of selected laws and individual provisions in additional laws must be connected to the effective date of the law on land ownership.

2. According to Section 11, Paragraph 1, of Law No. 131/1989 Sb. on the Collection of Laws, as modified by Law No. 426/1990 Sb., the day of proclamation of a legal regulation is considered to be the day on which the publication in which the regulation is contained was disseminated. For this purpose, the Collection of Laws is issued in sequentially numbered segments, each of which contains the date of its dissemination in the masthead. This is the date of proclamation of the legal regulations and measures contained in that section of the publication.

3. The effective date for this law is 24 June 1991.

Footnotes

1. Section 1 of Law No. 53/1966 Sb. on the protection of the agricultural land fund, as modified by Law No. 75/1976 Sb.

2. Section 2 of Law No. 61/1977 Sb. on forests.

3. Section 46, Paragraph 4, of Law No. 162/1990 Sb. on the agricultural cooperative movement.

4. Foreign Exchange Law No. 528/1990 Sb., Section 5.

5. Law No. 119/1990 Sb. on court-based rehabilitations. Law No. 87/1991 Sb. on extrajudicial rehabilitations.

6. Section 2, Paragraph 2, of Law No. 87/1991 Sb. on extrajudicial rehabilitations.

7. Section 2, Paragraph 3, Sentence 1, of Law No. 87/1991 Sb. on extrajudicial rehabilitations.

8. For example: Law No. 49/1959 Sb. on unified agricultural cooperatives. Law No. 122/1975 Sb. on the agricultural cooperative movement.

9. For example: Directive No. 26/1948 Sb. by the Board of Commissioners of the SNR, which modifies the extraction of agricultural property owned by Hungarian nationals from confiscation.

10. Sections 52 through 58 of Decree No. 83/1976 Sb. on common technical requirements for construction, as modified by Decree No. 45/1979 Sb.

11. Section 8 of Law No. 169/1949 Sb. on military reservations.

12. Section 6 and Section 7 of Law No. 44/1988 Sb. on protection and utilization of mineral wealth.

13. Law No. 40/1956 Sb. on state protection of nature, as modified in subsequent regulations. SNR Law No. 1/1955 Sb. on state protection of nature, as modified in subsequent regulations.

14. Section 8 of Law No. 169/1949 Sb. on military reservations.

15. Law No. 44/1988 Sb. on protection and utilization of mineral wealth.

16. Sections 2, 4, and 5 of CNR Law No. 20/1987 Sb. on state care for monuments. Sections 2, 4, and 5 of SNR Law No. 27/1987 Sb. on state care for monuments. Sections 5 and 6 of Law No. 40/1956 Sb. on state protection of nature, as modified in subsequent regulations. Sections 7 and 8 of SNR Law No. 1/1955 Sb. on state protection of nature, as modified in subsequent regulations.

17. Law No. 92/1991 Sb. on conditions for the transfer of property owned by the state to other individuals.

18. Section 46 of Law No. 162/1990 Sb. on the agricultural cooperative movement.

19. Section 1 of Law No. 123/1975 Sb. on utilizing land and other agricultural property to support production, as modified in subsequent regulations.

20. Section 12 of Law No. 61/1977 Sb. on forests.

21. Section 4 of Law No. 102/1963 Sb. on fisheries.

22. Section 70 of the Economic Code.

23. Section 64 of the Economic Code.

24. For example: Law No. 123/1975 Sb. on utilizing land and other agricultural property to support production. Law No. 61/1977 Sb. on forests.

25. Law No. 403/1990 Sb. on mitigating the consequences of some property injustices, as modified in subsequent regulations. Law No. 87/1991 Sb. on extrajudicial rehabilitations.

26. Section 43 of Law No. 162/1990 Sb. on the agricultural cooperative movement.

27. Law No. 173/1988 Sb. on enterprises with foreign property participation, as modified in subsequent regulations.

Law on Bankruptcy, Settlement

91CH0791B Prague HOSPODARSKE NOVINY in Czech 19 Jul 91 pp 8-10

["Text" of Law on Bankruptcy and Settlement, dated 11 July 1991]

[Text] The Federal Assembly of the Czech and Slovak Federal Republic has decided on the following law:

PART ONE. Introductory Provisions

Section 1

(1) The purpose of this law is to arrange the property conditions of a debtor who is in bankruptcy.

(2) A debtor is in bankruptcy if he has several creditors and is not capable of fulfilling his repayment obligations for a longer period of time.

(3) A physical person, if he is an entrepreneur, and a legal entity are also considered to be bankrupt if they are insolvent.

Section 2

(1) If a debtor is insolvent, he may petition the bankruptcy court (hereinafter referred to only as "the court") to initiate bankruptcy proceedings under certain conditions stipulated in this law or to petition for settlement proceedings (hereinafter referred to only as "settlement").

(2) The objective of bankruptcy or settlement proceedings is to achieve the relative satisfaction of creditors, using the debtor's property.

Section 3

(1) The proceedings are under the jurisdiction of the kraj or municipal court in whose circuit the general court of the debtor is located.

(2) Unless this law specifies otherwise, the bankruptcy and settlement proceedings shall be governed by the provisions of the Civil Judicial Code[1].

(3) The proceedings are handled and decisions are made by a single judge sitting alone. The court shall order negotiations to take place only in cases stipulated by law or if the court considers it necessary to do so. The court makes its decision by resolution.

PART TWO. Bankruptcy

Section 4

Proposal To Declare Bankruptcy

(1) Bankruptcy is declared upon the proposal of the debtor, his creditor, or the liquidator of a legal entity. A special law can grant other individuals the right to submit a proposal to declare bankruptcy.

(2) In the event the proposal is made by a creditor, it is necessary to document the fact that the individual submitting the proposal has a claim against the debtor, even if this claim is not yet due, and to list the circumstances which would indicate that the debtor is insolvent (Section 1). In the event the debtor has stopped payment, it is assumed that he is not capable of fulfilling his payments obligations.

(3) If the creditor withdraws his proposal to declare bankruptcy, the proposal cannot be resubmitted for the same claim until six months have passed since the legal decision was made to halt the proceedings.

Section 5

A prerequisite for the declaration of bankruptcy is that the debtor should have at least sufficient property to defray the costs of the proceedings.

Section 6

Bankruptcy Assets

(1) Property which is subject to bankruptcy proceedings makes up the assets of the bankruptcy (hereinafter referred to only as "assets").

(2) The bankruptcy proceedings pertain to property which was owned by the debtor on the day bankruptcy was declared and property which he has acquired during the bankruptcy proceedings; this property is also understood to include wages or other similar income. The bankruptcy assets do not include property which cannot be the subject of the executed decision; property serving to support entrepreneurial activities is not excluded from the assets.

Section 7

Participants in Bankruptcy

Participants in the bankruptcy proceedings are creditors who assert their claims (hereinafter referred to only as "bankruptcy creditors") and the debtor.

The Assets Administrator

Section 8

(1) The assets administrator (hereinafter referred to only as "the administrator") is basically selected from the list of administrators maintained by the court which has jurisdiction in the proceedings (Section 3, Paragraph 1). The listing of administrators may include only individuals with spotless records who are considered to be fully suited to undertake legal actions, have appropriate specialized knowledge, and agree with being listed in the register. The court may only appoint an administrator who is a physical person not involved in the case. Individuals registered in the listing of administrators may refuse to perform this function only for important reasons which are to be judged by the court. As an exception, the court may appoint an administrator who is not recorded in the register of administrators, provided this individual fulfills the conditions for registration in this listing.

(2) In executing his function, the administrator is obligated to proceed with specialized care and is responsible for damages resulting from violations of duties assigned to him by law or by the court.

(3) The administrator is entitled to compensation for expenditures as well as to remuneration. Any agreements made between the administrator and the bankrupt individual (Section 13, Paragraph 5) or the creditor regarding remuneration are invalid.

(4) If the administrator fails to fulfill his obligations correctly, the court may impose a penalty on him.

(5) For important reasons, the court may, upon the proposal by any one of the participants in the proceedings or by the administrator or even without such a proposal, strip the administrator of his function. If the court strips an administrator of his function, it shall appoint a new administrator. Being relieved of his function does not eliminate the administrator's responsibilities according to Paragraph 2 for the duration of his appointment. An administrator who has been relieved of a function is obligated to correctly inform the new administrator and to place all documents at his disposal.

Section 9

(1) If the extent of the administration function so requires, the court can appoint a special administrator to help the administrator in a specific area of the job. The special administrator has the same rights, obligations, and responsibilities as the administrator, within the confines of his jurisdiction.

(2) If it is purposeful, the court may appoint a deputy to the administrator against the case that the administrator might not, for serious reasons, be temporarily able to execute his function.

(3) Provisions governing the appointment of administrators are also applicable for the appointment, the remuneration, and the recall of special administrators and deputy administrators.

Meeting Between Bankruptcy Creditors and the Committee of Creditors

Section 10

(1) The court convenes a meeting of bankruptcy creditors, if that is required to determine their positions, as required for the further conduct of the bankruptcy proceedings, and directs their negotiations; the court always convenes such meetings, upon the proposal of the administrator. A meeting of bankruptcy creditors must be announced by a suitable method, listing the day and subject of the negotiations.

(2) For validation of decisions and for the election of the committee of creditors, a simple majority of votes is required, calculated according to the magnitude of the claims; if not otherwise specified, only the votes of bankruptcy creditors present at the meeting, or those who are properly represented, are counted. To validate the meeting held after an investigation, it is necessary for at least two bankruptcy creditors to be present, representing at least one-fourth of the bankruptcy claims.

(3) Only bankruptcy creditors whose claims have been verified may vote. The court shall decide whether bankruptcy creditors whose claims have not yet been verified, whose claims are disputed, or possibly those whose claims are conditional may also vote.

(4) Creditors who acquired their claims only after the declaration of bankruptcy are not entitled to vote, unless they acquired the claim as a countervalue for an obligation which they took over prior to the declaration of bankruptcy.

Section 11

(1) If the court agrees, the meeting of bankruptcy creditors can elect a creditors' committee. Members of the creditors' committee may be physical as well as legal entities from the ranks of the bankruptcy creditors and may have themselves represented at their own expense. At the same time, it is necessary to elect an equal number of alternates. The elected members and alternates may reject to perform the function or may give up their function for reasons recognized by the court. The court shall exercise care to see to it that the creditors' committee is constantly complete and, in important cases, the court may even expand the committee.

(2) The creditors' committee oversees the activity of the administrator and, at the behest of the court, is obligated to examine the administrator's management activities.

(3) The creditors' committee is convened by the court. All members and alternates of the creditors' committee are invited to attend the session.

(4) Validation of decisions by the creditors' committee requires a majority vote of all members of the creditors' committee or alternates, where alternates are representing regular members. A member may not vote in a matter in which he is involved.

(5) The members of the creditors' committee and the alternates may acquire items from the substance of the bankruptcy only through auction or on the basis of public commercial competition; other than that, they require the approval of the creditors' meeting. The same holds true for acquisition through another person.

(6) The members of the creditors' committee and the alternates are entitled to compensation for necessary expenditures connected with the execution of their functions. With the approval of the court, the administrator may pay them an appropriate remuneration, even before the bankruptcy proceedings are terminated, if they performed a special task at the behest of the court or in line with the decision by the creditors' committee or if their membership (alternate membership) was connected with an extraordinary loss of time or the expenditure of extraordinary effort.

Section 12

Court Supervision

(1) The court is entitled to demand reports and explanations from the administrator, to have access to his accounts, and to conduct any necessary investigations. The court can require the administrator to solicit the views of the creditor's committee with respect to certain questions or the court may issue orders to the administrator on its own.

(2) No appeal is permitted against measures taken with respect to the oversight activities of the court in the bankruptcy proceedings. The same is true of court decisions on the right to vote.

Section 13

Declaration of Bankruptcy

(1) If the court finds that the conditions for declaring bankruptcy have been fulfilled, it will decide to declare bankruptcy by means of a resolution, which must contain the justification. Otherwise, the court shall reject the proposal to declare bankruptcy.

(2) The resolution to proclaim bankruptcy must list the appointed administrator and the creditors must be asked to register all of their claims within 30 days of the declaration of bankruptcy, listing the size of these claims, the legal reason for these claims coming into being, and their security guarantees. The requirement must contain the warning that any claims which have not been recorded will not be considered during the bankruptcy proceedings.

(3) The resolution to proclaim bankruptcy is delivered to the participants in the bankruptcy proceedings; it is also delivered to the administrator, to the liquidator, and to all known creditors as well as to the appropriate tax authorities. The resolution is hand-delivered to the debtor.

(4) The resolution is posted on the day on which it was issued, in its complete text or in a suitably abridged text, on the official bulletin board at the okres court in whose circuit the debtor's enterprise or his domicile are located, in the event these are outside of the seat of the court. The court shall also publish an extract from the resolution by a method stipulated by special regulations. If the debtor is registered in the commercial register or in another register, the court shall notify the organization which maintains the register of the declaration of bankruptcy and that organization will make an appropriate entry in its register. At the same time, the court shall notify organs charged with maintaining real estate records of the declaration of bankruptcy.

(5) The consequences of the declaration of bankruptcy begin on the day the resolution is posted on the official bulletin board of the court. Effective that day, the debtor becomes a bankruptee and the liquidator shall not be authorized to perform his job for the duration of the bankruptcy proceedings.

Section 14

The Effects of Declaring Bankruptcy

(1) The declaration of bankruptcy has the following effects:

a) the right to handle the substance of the property passes to the administrator. Any legal actions taken by the bankruptee pertaining to this property are deemed to be ineffective as far as the bankruptcy creditors are concerned. A person who has concluded an agreement with the bankruptee may repudiate such an agreement, unless he was aware of the declaration of bankruptcy at the time the agreement was concluded;

b) the bankruptee may reject receiving a gift or may reject an inheritance only with the approval of the administrator;

c) proceedings pertaining to any claims for separate satisfaction (Section 28) or intended to exclude items from the substance of the property involved may be initiated and continued only against the administrator;

d) any proceedings other than those listed under Letter c) are halted. However, the proceedings may continue upon the proposal of the administrator, the bankruptee opponent, or upon the proposal of an insolvent participant in the proceedings[2]. This proposal may be submitted by the bankruptee only in the event the administrator does not do so within the time limit set by the court;

e) for purposes of collecting outstanding debts from the bankruptee, it is not possible to order the implementation of any decisions impacting on any property which

is part of the property substance, nor is it possible to acquire the right for separate satisfaction pertaining to any outstanding debt (Section 28);

f) the rights to separate satisfaction (Section 28) which pertain to property which is part of the property substance and which was acquired by creditors in the last two months prior to submission of the proposal to declare bankruptcy are extinguished; if the bankruptcy proceedings were halted in accordance with Section 44, Paragraph 1, Letter a), these rights can be again asserted. However, if the items or subjects of the claim have been converted into money during implementation of a decision within the above time limit, the proceeds which are appropriate to these items or claims shall be included in the substance of the property;

g) claims and obligations pertaining to the substance of the property which were not due become due;

h) the bankruptee's instructions, full powers of attorney, and hitherto unadopted proposals for conclusion of any contract become extinguished;

i) in cases in which a participant in the proceedings may have acquired an otherwise creditable mutual claim after declaration of bankruptcy, such claims cannot be credited;

j) procedures involved in the privatization process according to special regulations[3] are halted;

k) the bankruptee's coownership share of the assets of his marriage is eradicated and the share of this common property used by the bankruptee to support his entrepreneurial activities passes to the substance of the property involved.

(2) In the event a bilateral agreement had not yet been fulfilled at the time of bankruptcy declaration either by the bankruptee or by another party to the agreement, or if the agreement was only partially fulfilled, each party to the agreement may withdraw from the agreement.

(3) The administrator is authorized to terminate a rental agreement concluded by the bankruptee within the time limit stipulated or by another agreement, even if that agreement was concluded only for a given period of time.

Contestable Legal Actions

Section 15

(1) A creditor may demand that the court make a ruling that the debtor's legal actions, to the extent to which they curtail the satisfaction of the creditor's enforceable claim, shall be legally null and void against the creditor. The creditor has this right even if the claim against the debtor, based on his contestable action, has already become enforceable or if it has already been satisfied.

(2) Legal actions which the debtor has undertaken in the past three years with the intention of shortchanging his creditors and which intentions were known to the other side, as well as legal actions through which the creditors of the debtor were shortchanged and which occurred over the past three years between the debtor and his next of kin[4] or which the debtor undertook within the stipulated time to the benefit of these persons, may be contested; however, this is not so where the other side was unable to recognize the intentions of the debtor at the time to shortchange his creditors, even with the exercise of appropriate care.

(3) The right to contest legal actions is asserted against the individual who benefited from the contestable legal action of the debtor.

(4) A legal action which a creditor has successfully contested is null and void against him to the extent that the creditor may demand satisfaction of his claim from the resources which have escaped from the debtor's property as a result of a contestable legal action and, if this is not truly possible, the creditor has a right to compensation, which he shall exert against the individual who benefited from the subject action.

Section 16

(1) The right to contest legal actions may be asserted by the creditor or by the administrator.

(2) The right to contest legal actions may be asserted not only against individuals who negotiated a contestable legal action with the bankruptee, but also against their heirs; against third parties, only in the event the circumstances justifying contestability of legal actions against their legal predecessors are known.

(3) A contestable legal action cannot be used to settle a mutual claim of the contester against the bankruptee.

(4) All those resources which combine to shortchange the debtor's property as a result of a contestable legal action must be returned to the assets and, if this is not possible, monetary compensation must be paid.

Determination of Assets

Section 17

(1) The bankruptee is obligated to compile and deliver to the administrator a listing of his positive and negative assets, listing his debtors, creditors, and their addresses, deliver to the administrator his commercial books and all necessary documents and to provide the necessary explanations, without delay. The presented listing of assets and liabilities must be signed by the bankruptee and he must specifically note that it is correct and complete.

(2) If the bankruptcy is proposed by the debtor, he shall present his listing of assets and liabilities along with the proposal that bankruptcy be declared; if he is not the one to make the proposal, the bankruptee shall turn over the listing as soon as the administrator has requested that he do so, but no later than 15 days from the day bankruptcy is declared.

Section 18

(1) The compilation of assets (hereinafter referred to only as "compilation") shall be handled by the administrator in accordance with instructions from the court, making use of the listing submitted by the bankruptee. In the event the bankruptee fails to fulfill the duties outlined in Section 17, Paragraph 2, the court shall summon him to appear for purposes of compiling a protocol a regarding the listing of property and demand that he turn over the necessary lists to the administrator.

(2) Anyone who has items which properly belong among the assets is obligated to so notify the administrator as soon as he finds out that bankruptcy has been declared and must make it possible for the administrator to record the item in question in the compilation and to have its value estimated; otherwise, this individual is responsible for any resulting damages.

(3) Part of the compilation is an estimate of value, performed by a court expert. If the meeting of creditors so agrees, the court may be satisfied with a valuation estimate conducted by the bankruptee or by the administrator.

Section 19

(1) In case there are doubts as to whether an item is part of the assets, it is entered in the compilation of assets along with a remark regarding the claims asserted by other individuals or with a remark regarding other reasons which cast doubt upon the inclusion of the item in the compilation.

(2) The court tasks the individual who has asserted that the item should not be included in the compilation to file a complaint against the administrator within a time limit set by the court. In the event the charges are not filed on time, it shall be assumed that the item has been included in the compilation with justification.

Section 20

Registration of Claims

(1) Bankruptcy creditors shall record their claims within a time limit stipulated in the resolution which proclaims bankruptcy, even though these claims are subject to court proceedings or if the execution of the decision is being carried out. They shall, simultaneously, state whether they assert the right to separate satisfaction (Section 28), as well as listing other reasons for claiming priority treatment during distribution.

(2) Registration is carried out before the court in duplicate. To the extent to which the claim is supported by a written legal action, it is necessary to attach a listing pertaining to this action. Bankruptcy creditors who reside abroad or who have a seat abroad are obligated to list the name of their representative in Czechoslovakia in the registration for purposes of receiving mail; otherwise, a representative for receiving mail will be appointed for them by the court at their expense.

(3) The administrator is to receive the second copy of the registered claims and a copy of the registration statement entered into court documents; the registered claims are compiled by the administrator into a listing according to rank order for purposes of asset distribution.

(4) The administrator shall examine the registration statements primarily in line with the bankruptee's commercial books and other documents and shall challenge the bankruptee to express himself with regard to the compiled listing of registrations. He shall present this listing to the court.

(5) Participants in the proceedings are authorized to look at the listing of registered claims, compiled by the administrator, and they shall have access to the documentation supporting these claims.

(6) With respect to the statute of limitations and the extinguishment of rights, the registration of a claim has the same effect as the assertion of rights before a court.

Verification Proceedings

Section 21

(1) For purposes of verifying registered claims, the court shall order verification proceedings which the bankruptee and the administrator must attend. Verification is accomplished in accordance with the listing compiled by the administrator.

(2) The bankruptee as well as the bankruptcy creditors may contest the correctness, magnitude, and rank order of all registered claims.

(3) The results of the verification proceedings are entered into the register of claims submitted by the administrator and this register then becomes part of the entry with respect to the verification proceedings; the court issues an extract from this record of proceedings to the creditors at their request.

Section 22

If it is possible, the court shall also examine claims which have been received after the registration deadline; or, it can order special verification proceedings for these claims. Those bankruptcy creditors who have submitted their claims late shall be required to pay the expenses connected with issuing summonses to bankruptcy creditors and with the participation of the administrator. Bankruptcy creditors whose claims are verified in special verification proceedings cannot contest the correctness and the rank order of any claims verified during previous verification proceedings. The provisions of Section 21, Paragraph 3, apply to them as well.

Section 23

(1) A claim is considered to have been established if it has been recognized by the administrator and not contested by any of the bankruptcy creditors. If the bankruptee contests a claim, this fact is noted in the register of claims, but is of no significance with respect to the establishment of the claim.

(2) The bankruptcy creditors of claims which have remained in dispute as to their correctness, their magnitude, or their rank order may demand that a ruling be issued regarding their rights; they must prefer charges against the contesting bankruptcy creditors as well as against the administrator, but in the charges they may make reference only to the legal reasons listed in the claim or during the verification proceedings and they may assert their claim only to the extent to which it is listed in these documents. If the matter does not fall within the jurisdiction of the court, the appropriate administrative organ will rule on the correctness of the claim.

(3) Anyone who has contested an actionable claim must assert this position in accordance with the substance of the claim, either before the court or before the appropriate administrative organ.

(4) The court shall set an appropriate time limit for the contesting of claims, noting that if the deadline according to Section 24, Paragraph 1, is missed, it is not possible to take such claims into account and that, in the event the deadline is missed in accordance with Section 24, Paragraph 2, such claims will be considered to be uncontestable.

(5) Bankruptcy creditors of claims which have been disputed with respect to their correctness, magnitude, or rank order, who were not present at the verification proceedings, shall communicate to the court as to who contested the claim and for what reasons the claim was contested.

Section 24

(1) The administrator is authorized to deny a claim recorded by a bankruptcy creditor, the size of the claim, or its rank order. He shall notify the court of this action as well as the bankruptcy creditor whose claim is involved and, at the same time, will challenge the creditor to assert the size of the claim or the legal reasons within 30 days before the court which has proclaimed bankruptcy or before another appropriate organ, noting that otherwise the denied claim, its asserted value, or its asserted legal reasons will not be taken into account by him.

(2) If the administrator has denied a claim which has already become actionable, the court will challenge him to assert his denial within 30 days before the court which has proclaimed bankruptcy and possibly before another appropriate organ, noting that otherwise the claim will be considered to have been established.

Section 25

(1) The decision by the court or by the appropriate administrative organ regarding the correctness, magnitude, or rank order of denied claims is applicable for all creditors.

(2) Expenditures connected with the dispute of correctness, size, or rank order of denied claims are considered to be expenditures chargeable to the assets, provided such a dispute was participated in by the administrator. If the administrator does not participate in the dispute, the contesting creditors have a right to be compensated for expenses out of the assets only to the extent to which the assets may have somehow benefited from the dispute proceedings.

Section 26

Undivided Coownership of Married Couples

(1) If the declaration of bankruptcy has resulted in the extinguishment of the undivided coownership of a couple, or if, during the declaration of bankruptcy, the bankruptee's previously extinguished undivided coownership rights of a couple have not been settled, it is necessary to settle them now.

(2) The administrator is authorized to conduct a settlement of the undivided coownership rights of couples which have become extinguished as a result of the declaration of bankruptcy in place of the bankruptee, including submission of a proposal that this undivided coownership right of couples be settled by the court. The administrator is authorized to conclude an agreement regarding the settlement of undivided coownership rights of couples only in the form of an arrangement approved by the court.

(3) In the event the undivided coownership rights of a couple were extinguished even before the bankruptcy was proclaimed,

a) agreements on settlement of undivided coownership, concluded in the last six months prior to declaration of bankruptcy, are considered invalid;

b) the administrator shall take the place of the bankruptee in any proceedings involving the settlement of undivided coownership which have already been initiated, but have, thus far, not yet been legally concluded, effective on the day bankruptcy was proclaimed;

c) in the event proceedings to settle undivided coownership of a couple have not yet been initiated, the administrator is obligated to submit a proposal for the settlement in place of the bankruptee without any undue delay;

d) the effectiveness of an agreement to settle the undivided coownership of couples requires approval by the court.

Conversion Into Money

Section 27

(1) Assets may be converted into money either by selling them off by the method regulated in the provisions governing the implementation of the court decision or by selling them by means other than an auction.

(2) The sale by means other than an auction shall be accomplished by the administrator with the approval of the court and under conditions set by the court, after hearing the bankruptee or possibly the creditor's committee. Assets can be sold by methods other than auction even below the estimated price or below a price stipulated by pricing regulations. A similar procedure can also be applied to the transfer of even the bankruptee's contested or difficult-to-enforce claims.

(3) The conversion of assets to money through the sale as provided for in the regulations covering the implementation of the decision, shall be accomplished by the court upon the proposal of the administrator who, in such cases, has the standing of an authorized person.

(4) Uncollectible claims and items which it was impossible to sell can be excluded from the compilation of assets by the administrator upon approval by the court.

Section 28

(1) Creditors of claims which have been secured by mortgage provisions or by garnishee laws, or possibly by limiting the transfer of real estate (hereinafter referred to only as "separated creditors"), have the right to have their claims satisfied out of the proceeds of the sale of items which are encumbered by mortgages or by garnishee rulings.

(2) The proceeds from the sale of items shall be turned over by the administrator with the approval of the court to the creditors, to the extent of their recognized claims. If a recognized claim has not been fully satisfied in this manner, its unsatisfied portion is considered as a claim to be registered in accordance with Section 20 above.

Section 29

(1) The administrator provides the court with reports on converting assets to money. A final report, together with an accounting of his remuneration and expenditures, is to be submitted to the court by the administrator after the assets have been converted into money. Special administrators and deputy administrators, as well as those who were stripped of the function of administrator during the course of the proceedings, also submit accountings of their remuneration and expenditures.

(2) The court shall examine the final report regarding the conversion of assets to money and the accounting of remunerations and expenditures, shall eliminate any errors or unclarities after hearing the administrator, and shall notify the bankruptee and the bankruptcy creditors of the final report and accounting involved. The court shall note that the final report and accounting are subject to appeal within 15 days from the day they were posted on the official bulletin board of the court.

(3) The court shall discuss the final report and accounting in proceedings to which it shall invite the administrator, the bankruptee, and the bankruptcy creditors who have submitted objections, or even the creditor's committee, and shall make its decision by decree, which it will deliver to them and post on the official bulletin board of the court.

Distribution

Section 30

(1) After the decree approving the final report and accounting of remuneration and expenditures takes legal effect, the court shall issue a distribution decree.

(2) The distribution decree is to be hand-delivered to the participants in the proceedings, with the exception of those bankruptcy creditors whose claims have already been fully satisfied.

Section 31

(1) Claims to have certain items excluded from the assets (Section 19, Paragraph 2), claims against assets (Section 31, Paragraph 2), claims to have separate satisfaction (Section 28), and working claims (Section 31, Paragraph 3) can be satisfied at any time during the progress of the bankruptcy proceedings. Other claims may only be satisfied in accordance with the legal distribution plan decree.

(2) Claims against assets which have arisen after the proclamation of bankruptcy are claims for compensation of expenditures connected with the maintenance and administration of the assets, including the claims made by the administrator for compensation of remuneration and expenditures, taxes and fees, which have come due during the course of the bankruptcy proceedings, as well as the claims of creditors based on agreements concluded by the administrator, and claims for restitution of the substance of agreements which have been renounced in accordance with Section 14, Paragraph 1, Letter a).

(3) Working claims, in the sense of the provisions of Paragraph 1, are the compensation of working remunerations of the bankruptee's employees and their entitlements, based on the material guarantees offered employees.

Section 32

(1) The distribution plan first gives satisfaction to claims against assets (Section 31, Paragraph 2) and to working claims (Section 31, Paragraph 3). If the proceeds of converting the assets to money are not sufficient to provide full compensation for all of these claims, the expenditures of the administrator are met first and the remainder of the claims are satisfied on a proportional basis.

(2) After the claims listed in Paragraph 1 above are completely satisfied, the remainder of the claims are satisfied in the following sequence:

a) claims by the bankruptee's employees based on their employment conditions for the three years prior to the declaration of bankruptcy and alimony claims based on the law (first-class claims);

b) taxes, fees, customs duties, and social security payments (insurance payments), to the extent to which they came into being at the very latest three years prior to the declaration of bankruptcy, as well as during its course, provided they are not satisfied out of resources encumbered by mortgages (second-class claims);

c) the remaining claims (third-class claims).

(3) If it is not possible to fully satisfy claims in the sequence listed in Paragraph 2 above, they are satisfied on a proportional basis.

Section 33

(1) Excluded from the satisfaction of claims are the following:

a) interest on the claims of creditors which came into being prior to the declaration of bankruptcy, if this interest has increased in the period since the declaration of bankruptcy;

b) expenditures of the participants in the proceedings, based on their participation in the bankruptcy proceedings;

c) claims of creditors based on gift agreements;

d) extracontractual sanctions impacting the property of the bankruptee.

(2) Sums to cover the following:

a) enforceable claims which the administrator has denied and whose denial he asserted in sufficient time;

b) conditional claims, which the administrator recognized;

c) claims which were asserted by creditors in sufficient time and denied by the administrator are deposited to be held by the court and, after fulfilling the required conditions, become the subject of a new distribution decree.

Forced Settlement

Section 34

(1) If no distribution decree has as yet been issued in the course of the bankruptcy proceedings, the bankruptee may propose that the bankruptcy be terminated by a forced settlement; he may not make this proposal until after the verification proceedings.

(2) The proposal must list the kind of settlement the bankruptee is offering. If the proposer suggests certain individuals who are willing to vouch for the fulfillment of the forced settlement, these individuals must cosign the proposal and their signatures must be officially verified.

Section 35

A forced settlement is not permissible if the circumstances indicate that the proposer does not have an honest intention in mind. Such circumstances are particularly the inadequate cooperation by the bankruptee in determining the extent of his property holdings, defects in the maintenance of commercial books, the shortchanging of creditors during the period prior to the declaration of bankruptcy, previous bankruptcies or settlements, and the disproportionately low satisfaction of claims for bankruptcy creditors in accordance with the proposal for a forced settlement, in comparison with the possibilities for satisfaction in accordance with the decree on implementing the bankruptcy proceedings.

Section 36

(1) The court shall reject the proposal for a forced settlement for the following reasons:

a) if, by confirming it, there would be an impact on the rights to exclude certain items from assets, the rights for separate satisfaction (Section 28), or the provision of alimony based on law, or

b) if claims listed in Section 31, Paragraphs 2 and 3, and Section 32, Paragraph 2, Letters a) and b), might not be satisfied or guaranteed, or

c) if the undivided coownership of a married couple has not been settled, the coownership having been extinguished by the declaration of bankruptcy or prior to the declaration of bankruptcy.

(2) If the court does not decide that a forced settlement is not permissible, it shall decree that proceedings regarding forced settlement are to be held and will defer the conversion of the assets to money.

Section 37

(1) For all purposes of negotiating a forced settlement, the court shall summon the bankruptee, persons who have vouched for the fulfillment of forced settlement, the administrator, and all hitherto unsatisfied bankruptcy creditors, as well as the creditor's committee, provided one has been established. The summons is hand-delivered to the individuals concerned and is accompanied by a proposal to undertake forced settlement. A notice regarding the negotiations is posted on the official bulletin board of the court.

(2) The bankruptee is obligated to attend the negotiations. In the event that he should not show up without a valid excuse, it is assumed that he has dropped the proposal for forced settlement.

(3) During the negotiations, the administrator shall provide the necessary information regarding the status of the bankruptee's property, report on the bankruptee's management, the reasons for the bankruptcy, and also information on the kinds of results the bankruptcy creditors may anticipate if the bankruptcy proceedings were to be continued to their end. The court shall examine the report and can require that an expert opinion be rendered with respect to the report.

(4) During the negotiations, the court shall determine which of the bankruptcy creditors are willing to agree to the proposal for forced settlement.

Section 38

(1) A prerequisite for the confirmation of forced settlement by the court is the agreement by the majority of the bankruptcy creditors, permitting those present or those represented, who have recorded their claims in sufficient time and whose votes represent more than three-fourths of all recorded claims, to act.

(2) The following individuals do not have the right to vote:

a) bankruptcy creditors whose rights will not be impacted by forced settlement (particularly separated creditors and creditors with claims against assets);

b) bankruptcy creditors who are the next of kin of the bankruptee[4], unless they acquired a claim from a person who was not the next of kin of the bankruptee more than six months prior to declaration of bankruptcy; however, their votes are counted in the event they oppose the proposal to undertake forced settlement;

c) legal successors of next of kin of the bankruptee[4] if they acquired the claim from a next of kin during the six months preceding the declaration of bankruptcy; their votes are counted, however, in the event they oppose the proposal to undertake a forced settlement;

d) bankruptcy creditors whose claims, which have been registered during the course of bankruptcy, have not yet been ascertained, are in doubt, or are conditional, unless the court, after hearing the other participants in the proceedings, grants them voting rights.

(3) Only those authorized bankruptcy creditors who are present in person at the proceedings or are represented at the hearings may vote. The votes of bankruptcy creditors asserted in any other way are not recognized.

(4) The voting deals only with still unsatisfied claims and does so to the extent to which they have hitherto not been satisfied.

Section 39

(1) The court shall decide to confirm forced settlement by issuing a decree containing the text of the forced settlement.

(2) The decree confirming forced settlement is published to the extent necessary; moreover, the decree is posted on the official bulletin board of the court and the day of its posting is marked on it. Furthermore, on the day the decree is posted on the official bulletin board of the court, it is also delivered into the hands of the bankruptee, the administrator, all bankruptcy creditors, and persons who have vouched for the fulfillment of forced settlement as guarantors or codebtors.

(3) Participants who did not specifically vote for forced settlement, the bankruptee's codebtors and guarantors, may submit an appeal against the decree confirming forced settlement.

Section 40

(1) The court shall reject a proposal to confirm forced settlement, even if the bankruptcy creditors have approved it, if the following facts have come to light:

a) that reasons exist for which the proposal to undertake forced settlement is not permissible (Section 35);

b) that one or another bankruptcy creditor has been afforded special advantages against other bankruptcy creditors of equal standing;

c) that the advantages afforded to the bankruptee as a result of forced settlement are not proportional to his economic conditions;

d) that forced settlement is in violation of the common interests of the bankruptcy creditors;

e) that the bankruptcy creditors of claims listed in Section 32, Paragraph 2, Letter c), above are scheduled to receive less than one-third of their claims at the latest within one year;

f) that forced settlement would continue the bankruptee's dishonest or frivolous way of managing.

(2) The decree denying the proposal, in accordance with Paragraph 1 above, is handed to the bankruptee, the administrator, to all bankruptcy creditors, and to all persons who have obligated themselves to the fulfillment of the forced settlement as guarantors or codebtors. The decree is hand-delivered to the bankruptee and to bankruptcy creditors who were not opposed to the adoption of forced settlement; they are the only ones who can appeal against this decree.

Section 41

(1) Once the decree confirming forced settlement has acquired legal force, the court shall, by decree,

a) return to the bankruptee the authorization to dispose of any property which is part of the assets (Section 14, Paragraph 1, Letter a));

b) proclaim that the bankruptee shall have standing as the administrator in all proceedings, which the latter

handled in place of the bankruptee (Section 14, Paragraph 1, Letter c)), and that in the administrator's place, the bankruptee becomes a participant in these proceedings;

c) return to the bankruptee all other rights which were abridged by the declaration of bankruptcy.

(2) The confirmed forced settlement does not impact the rights of creditors, which are assertable against codebtors and codebtor guarantors, to the extent to which they specifically disagree with the fact that these rights be abridged.

Section 42

(1) If the forced settlement has been confirmed by the court and has been fulfilled completely and on a timely basis, the bankruptee is relieved of the obligation to compensate the bankruptcy creditors for any losses suffered as a result of the settlement; he is also relieved of any obligations he may have to guarantors and other persons who might have a claim against him. Any agreements in violation of these principles are invalid. Interest on bankruptcy claims for the period from the declaration of bankruptcy and expenditures which have arisen for individual bankruptcy creditors as a result of participating in the bankruptcy proceedings cannot be recognized.

(2) Bankruptcy creditors, whose claims were not taken into account, may demand complete payment by the debtor, even after the bankruptcy proceedings have been concluded, irrespective of whether they were aware of the declaration of bankruptcy or had to know of it.

(3) If the bankruptee's property is subject to new bankruptcy proceedings even before the bankruptee has fully fulfilled the provisions of forced settlement, the bankruptcy creditors are not obligated to return that which they obtained in good faith on the basis of the forced settlement. In new bankruptcy proceedings, their claims are considered as having been satisfied only to the extent to which sums were actually paid out to them in accordance with the forced settlement.

Section 43

(1) If the forced settlement, which was confirmed by the court, has not been fulfilled, although the bankruptee was so reminded by a letter delivered to him from the bankruptcy creditor, containing an additional time limit of at least eight days, all reductions and other advantages stemming from the forced settlement become invalid; the rights of bankruptcy creditors, which have been acquired as a result of the settlement against the bankruptee, are not impacted by this.

(2) In the event the forced settlement was achieved through fraudulent negotiations or on the basis of an unpermitted affording of special advantages to individual bankruptcy creditors, every bankruptcy creditor may, within a period of three years from the time the forced settlement was confirmed, assert the entitlement that his claims be fully satisfied or that any other advantages be considered as ineffective; the court which proclaimed the bankruptcy proceedings has jurisdiction over such entitlements. However, bankruptcy creditors who participated in fraudulent negotiations or in impermissible agreements, or who could assert reasons why the proceedings surrounding confirmation of forced settlement should be ineffective, have no such entitlements.

(3) If, within three years of the confirmation of forced settlement, the bankruptee has been legally sentenced for committing a deliberate criminal act through which he achieved forced settlement or through which he shorted the satisfaction of his bankruptcy creditor, the forced settlement becomes invalid and creditors may require the bankruptee to fully satisfy their claims; the actionability of decisions made during the course of the bankruptcy proceedings is not impacted by this. Provided that the bankruptee's property is adequate to at least cover the expenditures of the bankruptcy proceedings, the creditor may propose that the bankruptcy proceedings be repeated.

Cancellation of Bankruptcy

Section 44

(1) The court shall, by decree, cancel bankruptcy proceedings in which forced settlement has not been confirmed,

a) if it discovers that prerequisites for bankruptcy are not present;

b) upon fulfillment of the distribution decree;

c) upon the proposal of the bankruptee, if all bankruptcy creditors have given their agreement in a listing through officially verified signatures, and provided the administrator so agrees.

(2) In the event the bankruptee has died during the course of the bankruptcy proceedings, the claims of creditors are handled within the framework of the inheritance proceedings, consistent with this law.

(3) In the event forced settlement had been confirmed, the court will discontinue the bankruptcy proceedings, if the bankruptee proves that the assurances given by him for the fulfillment of claims that certain matters be excluded from the assets, the claims of separate creditors for separate satisfaction (Section 28), as well as claims according to Section 31, Paragraph 3, are adequate. If the bankruptcy proceedings have not been discontinued in accordance with Paragraph 1, the court shall not discontinue them until fulfillment of the forced settlement has taken place.

(4) In its decree discontinuing the bankruptcy proceedings, the court shall relieve the administrator of his function.

(5) The same provisions which apply to the hand-delivery and publication of the decree proclaiming the bankruptcy proceedings apply to the decree discontinuing these hearings.

Section 45

(1) Discontinuation of bankruptcy proceedings extinguishes the effects of proclaiming bankruptcy, as listed in Section 14.

(2) After the distribution decree has become legally effective, it is possible to enforce that decision with respect to the wealth of the bankruptee on the basis of the listing of verified claims.

PART THREE. Settlement

Proposal for Settlement

Section 46

(1) The debtor, for whom the conditions for declaring bankruptcy exist, may petition the court which has jurisdiction in the bankruptcy proceedings (Section 3, Paragraph 1) to undertake settlement. The court shall discuss the proposal only if bankruptcy has not already been declared.

(2) In his proposal, the debtor shall state the type of settlement he is offering. Individuals willing to vouch for fulfillment of the settlement as codebtors or guarantors must cosign the proposal. If the undivided coownership of a married couple has not yet been settled, the proposal must also be signed by the second undivided coowner to document that he or she agrees with utilizing all of the property subject to the unsettled undivided coownership for purposes of the settlement. All signatures must be officially verified.

(3) In the event the proposer is an entrepreneur, he shall state, in his proposal, the number of employees of the enterprise, as well as the measures which he will undertake to reorganize and to continue the financing of the enterprise.

Section 47

(1) The debtor must attach a complete listing of his property to his proposal, providing an overview of the status of the property at the time the proposal is submitted. He shall list the individual portions of movable and real property and the place of its location; in the case of claims, he shall list their magnitudes, the reason for their existence, and the possibility of satisfying them. In addition to the property, he shall also list his obligations, together with the addresses of creditors, and indicate which of them are the next of kin of the debtor[4]. If the debtor's undivided coownership of a married couple has not been settled, the debtor must indicate which of the items in the listing are exclusively owned by him and which belong in the undivided coownership assets of the couple. The final listing must also include the magnitude of his indebtedness.

(2) The listing discussed in Paragraph 1 above must be signed by the debtor and submitted in as many copies as are needed for delivery to all creditors and to the settlement administrator (Section 50, Paragraph 3, Letter a)).

(3) In the event the debtor does not eliminate any substantive errors in the proposal within the time limit set by the court, the court will halt the proceedings.

Section 48

Settlement Participants

Participants in the settlement are the debtor, the debtor's spouse, any codebtors and guarantors of the debtor, to the extent to which they have cosigned the proposal to initiate settlement, as well as creditors who recorded their claims in sufficient time (Section 50, Paragraph 3, Letter c)) and who have not been fully satisfied.

Section 49

The Effects of Submitting the Proposal

(1) From the time the proposal is submitted until the decision is made to permit settlement (Section 50, Paragraph 3), the debtor may neither misappropriate nor encumber any real estate, establish rights to separate satisfaction (Section 28) pertaining to his property, undertake any obligations as a guarantor or codebtor, nor make any disproportionate gifts from his property, and take any kind of actions which might damage his creditors.

(2) Any actions in conflict with the provisions of Paragraph 1 are ineffective with respect to creditors; any creditor may assert the ineffectivity before a court at the latest by the day the decree halting or concluding the settlement proceedings is posted on the official bulletin board of the court.

Decision Regarding the Proposal

Section 50

(1) The court shall reject the proposal by decree if it should find that:

a) the debtor was sentenced for the criminal act of fraud or damage to a creditor during the last five years prior to submission of the proposal[5] or in the event the circumstances of the proposal submission lead to the conclusion that the proposal does not follow an honest intention or

b) in the five-year period prior to submission of the proposal, the debtor's property was subject to a declaration of bankruptcy or that the debtor has submitted a proposal to permit settlement or

c) the proposal is in violation of the provisions of Section 60, Paragraph 1, Letter b), or

d) creditors whose claims do not have priority (Section 54) were not offered a payment equal to at least 45 percent of the size of their claim which fall within a two-year period as of the day when the proposal was submitted;

e) the proposal does not contain any of the facts listed in Section 46, Paragraph 3, to the extent to which it is supposed to contain these facts.

(2) A resolution in accordance with Paragraph 1 shall be delivered by the court only to the proposer.

(3) The court shall decide on whether to permit settlement by decree in which it simultaneously:

a) appoints a settlement administrator from among the ranks of individuals registered in a special portion of the register (Section 8, Paragraph 1) whose rights, obligations, and responsibilities are contained in the appropriate provisions covering assets administrators;

b) initiates settlement proceedings for a period not to exceed six weeks from the day the resolution was posted on the official bulletin board of the court;

c) challenges the creditors to register their entitlements in writing or orally in a protocol within four weeks of the day the resolution is posted on the official bulletin board of the court;

d) decides on those measures which are necessary to secure the debtor's property.

(4) The appropriate provisions of Section 8 apply with respect to the rights and obligations of the settlement administrator.

Section 51

(1) The resolution permitting settlement is delivered to all known creditors and the administrator, as well as to the debtor, to individuals listed in Section 46, Paragraph 2, and to the tax authorities. Creditors also receive a copy of the listing of the debtor's property and an overview of the status of the debtor's property. The resolution is posted on the day it is issued, either in full text or in suitably abridged form, on the official bulletin board of the court, as well as on the official bulletin board of the okres court in the okres in whose circuit the debtor resides or is headquartered, provided these locations are outside of the circuit of the court which has permitted settlement. The court shall publish an extract from the decree as called for in Section 13, Paragraph 4.

(2) The court shall notify the organs entrusted with controlling the commercial or any other register and real estate records of the permission to allow settlement. If the decision is enforced against the debtor and involves his real estate holdings, the court shall provide a copy of the decree for the appropriate files.

(3) The creditor and the debtor may, within 15 days of receiving the decree, propose that another administrator be appointed. If the court admits that there is justification for this proposal, it shall relieve the administrator of his function and appoint another. The same holds true in the event the court takes cognizance of relieving an administrator of his function or if there are reasons for his recall.

(4) The decree which permits the settlement can be appealed by the creditors whose claims do not have priority rights. A decree which rejects the proposal for settlement may only be appealed by the debtor.

Section 52

The Effects of Permitting Settlement

(1) The effects of permitting settlement begin on the day the decree is posted on the bulletin board of the court.

(2) Permitting a settlement has the following effects:

a) the debtor may not independently engage in any legal actions which may result in shorting the interests of creditors; the settlement administrator is authorized to determine which legal actions the debtor may take and which require his approval and can reserve the right to make and receive payments or fulfill other obligations apart from the debtor;

b) the court can order the debtor to abstain completely from taking certain legal actions, or to undertake them only with the prior approval of the settlement administrator; it may also decide on other measures necessary to secure the debtor's property;

c) legal actions by the debtor which are in violation of the provisions listed under Letters a) and b) above are invalid with respect to creditors;

d) for the duration of the settlement, the debtor may not propose that bankruptcy be declared;

e) the creditors may not propose that the debtor's property be subjected to bankruptcy proceedings, nor may they enforce a decision with respect to those claims which do not have priority (Section 54);

f) claims which are included in the settlement are subject to the effects of being recognized as obligations by the debtor.

(3) The claims of creditors who had been requested by the court to register their entitlements or who knew of the settlement proceedings become null and void if they were not registered within the time limit set by the court.

Section 53

The Rights, Claims, and Entitlements of Creditors During Settlement

(1) During settlement, everyone who has recorded their entitlement on the basis of a court ruling (Section 53, Paragraph 3, Letter c)) is considered to be a creditor. The

method, sequential order, and magnitude of claim satisfaction is not determined until after settlement is confirmed (Section 60), if satisfaction is not possible outside of settlement in accordance with subsequent provisions.

(2) Interest payments, including interest charges for late payments from the day on which the permission to settle became legal, are excluded from the settlement proceedings and a claim for them becomes extinguished on the day the decree confirming settlement becomes legally effective.

(3) Neither obligations based on contracts listed in Section 14, Paragraph 2, nor parts of such obligations are included for purposes of settlement.

Section 54

Priority Claims

(1) The following have the right to priority satisfaction in settlement proceedings:

a) claims having to do with the cost of the proceedings;

b) claims based on legal actions taken by the debtor or the administrator who is acting for the debtor (Section 52, Paragraph 2, Letters a) and b)) and the entitlement of the administrator to remuneration and to have his expenses covered;

c) taxes, fees, customs duties, and contributions to social security (insurance) to the extent to which they came into being at the latest three years prior to the granting of permission to settle, if they are not satisfied on the basis of items subject to mortgage provisions for such purposes;

d) all obligations of the debtor, accruing on the basis of a labor law relationship, provided they do not exceed the entitlements for the last three years prior to the granting of the mission to undertake settlement.

(2) The bearers of claims listed in Paragraph 1 above are priority creditors.

Section 55

Undivided Coownership of Couples

(1) By signing the proposal for settlement, the undivided coowner takes on the obligation to allow the use of all of the property subject to the undivided coownership of a married couple to be used for purposes of settlement; this obligation persists even though the undivided coownership of the couple has become extinguished following submission of the proposal to settle. This obligation becomes extinguished as a result of the death of an undivided coowner who has signed it.

(2) Any undivided coownership among a married couple which has been settled by agreement between both coowners in the last six months prior to submission of the proposal is not considered as having been settled.

(3) A court ruling on the settlement of an undivided coownership of a married couple which has not been terminated prior to submission of the proposal for settlement can be terminated after submission of the proposal for settlement only by court verdict. The special regulations governing the time limit are not operative between the time the proposal for settlement is submitted and the time the proceedings are halted or settlement is accomplished[5].

Section 56

Registration of Claims

(1) Creditors must register their claims within the time limit set in Section 50, Paragraph 3, Letter c).

(2) The registration statement must list the size of the claim and the legal reasons why it came into being, or possibly even the designation of the court before which the claim has already been asserted.

(3) Even priority creditors must register their claims for settlement (Section 54, Paragraph 2).

Section 57

Registration Listing

(1) The administrator shall enter the registrations into a listing in the sequence in which they have been received by the court, separating the registrations of priority claims from the others. He shall examine the registered claims in accordance with the commercial books and other documents. The court shall demand a statement from the debtor as to whether he admits to the existence of the individual claims. In the event the debtor contests a claim, he must list the reasons. If the debtor does not express himself within the time limit set by the administrator, it means that he recognizes the validity of the claim; the claim is also recognized as valid in the event the debtor's property is subject to the declaration of bankruptcy within three years.

(2) The administrator shall require the creditors to look at the listing of registered claims and at the position taken by the debtor within the time limit established by him. At the same time, he shall notify them that they can express their views with respect to the listing and the positions taken by the debtor and that their views will be attached to the listing or that a notation will be made stating that they have not expressed their views.

Section 58

Settlement Proceedings

(1) Creditors who have registered their claims in sufficient time are entitled to submit proposals and declarations, as well as to vote with regard to the settlement even prior to the settlement proceedings. Late registrations are to be taken into account in settlement proceedings, provided it is possible to verify them without undue delay.

(2) During settlement proceedings (Section 50, Paragraph 3, Letter b)), the court shall determine which of the creditors is willing to accept the proposal for settlement. The right to vote is addressed in provisions of Section 38 with the following deviations:

a) the debtor must attend the settlement hearings in person. After the hearings have begun, he may not withdraw his proposal for settlement, nor change it to the detriment of the creditors. If he fails to show up without an excuse or if his excuse is not accepted by the court to be justified, the court shall halt the proceedings;

b) the creditors are not obligated to attend the hearings in person. Only creditors who are present at the hearings or who are suitably represented may vote on accepting settlement;

c) only those creditors who would suffer a property loss as a result of settlement are entitled to vote;

d) separated creditors (Section 28) vote only on that portion of their claim which will not be compensated for as a result of the right to separate satisfaction (Section 28);

e) priority creditors and creditors whose right to vote has been contested by the administrator, the debtor, or by other creditors do not have the right to vote;

f) creditors who have acquired their claim as a result of concessions by the debtor during the period when the debtor was already in bankruptcy do not have the right to vote.

Section 59

Contesting a Claim

Contesting the correctness or size of some of the registered claims by the debtor, administrator, or by one of the creditors who is authorized to vote has the following effects:

a) if the debtor contests the claim, the court must, after hearing the participants and upon the proposal of a creditor, order that the sum allocated to the contested claim be secured by deposit into escrow with the court; at the same time, the court shall prescribe a deadline for the creditor to assert his contested claim, with the notation that the escrow amount will be released to the benefit of the debtor in the event the deadline is not met. If the debtor contests a claim, the consequences are that this claim cannot be subject to enforcement of the decision on the basis of a court-confirmed settlement (Section 63, Paragraph 4); however, if the contested claim is already actionable, it is up to the debtor to assert his rights according to the general provisions of the Civil Judicial Code[6];

b) if the administrator contests a claim, it may not be enforced on the basis of the court-confirmed settlement (Section 63, Paragraph 4);

c) a claim which is contested by another creditor has no influence on the settlement.

Confirmation of Settlement

Section 60

(1) Provided the following conditions have been fulfilled, the court shall confirm settlement by decree:

a) the entitlements of individuals who are authorized to demand the exclusion of certain items, the entitlements of separated creditors (Section 28), and the entitlements to alimony payments are not impacted by the settlement;

b) priority claims are paid or their payment is assured;

c) creditors of other claims are satisfied in equal measure, provided they had not agreed that some should be satisfied more advantageously;

d) no one creditor of equal rank order is granted a special advantage, provided such advantage is not granted in accordance with Letter c);

e) the rights of creditors in the case of codebtors and guarantors of the debtor are not impacted, except for such cases which are expressly approved by these creditors.

(2) The decree which confirmed the settlement becomes actionable as it becomes legal. For purposes of confirming court settlement, provisions for confirming forced settlement also apply (Sections 39 and 40). In the event the debtor dies before the decision to confirm settlement has been adopted, the court may confirm such settlement only after the authorized heirs of the debtor have proclaimed that they agree with the proposed settlement and provided they do so at the latest during the settlement proceedings; otherwise, the court shall stop settlement.

Section 61

(1) The court shall refuse to confirm settlement, even if the creditors have agreed to it, under the following conditions:

a) if there are no reasons for permitting settlement (Section 50, Paragraph 1);

b) if one of the creditors has been granted special advantages (Section 60, Paragraph 1, Letter d));

c) if the costs of the proceedings have not been paid within 30 days of the acceptance of settlement or if payment has not been assured, even though the debtor was required to make these payments without delay after accepting settlement.

(2) The court may refuse to confirm settlement under the following conditions:

a) if there are advantages which accrue to the debtor as a result of the adopted settlement which are in considerable conflict with his ascertained economic conditions;

b) if it is not possible to obtain an adequate overview of the economic conditions of the debtor, particularly because he did not keep commercial books properly;

c) in the event the accepted settlement is in considerable conflict with the common interests of the creditors.

Section 62

(1) Only those creditors who did not expressly agree to the settlement, as well as guarantors and codebtors of the debtor may file an appeal regarding the decree confirming the settlement.

(2) The decree which rejects the confirmation of settlement may be appealed by the debtor and by the creditors who disapproved the acceptance of the settlement in the first place.

Section 63

The Effects of a Confirmed Settlement

(1) Once the decree confirming settlement has become legal and the debtor has fulfilled his obligations according to it completely and on a timely basis, his obligation to fulfill any portion of an obligation toward his creditors which he was not obligated to fulfill in accordance with the content of the settlement becomes null and void, even if the creditors voted against the adoption of the settlement or failed to participate in such voting.

(2) A confirmed settlement does not impact the right of creditors to sue codebtors and guarantors of the debtor, provided they did not specifically renounce these rights.

(3) If the debtor's property was subject to a declaration of bankruptcy sooner than the debtor fulfilled his obligations as a result of the settlement, the claims of creditors in bankruptcy are considered to have been satisfied by the payment actually made to them in accordance with the settlement.

(4) On the basis of a legal decree confirming settlement of a claim registered in the registration list, it is possible to enforce the decision, with the exception of cases in which a claim was contested by the debtor or the administrator. The costs of the proceedings, which were determined during the course of the settlement, may be enforced against the debtor by executing the decision if they were not paid or secured within the stipulated time limit (Section 61, Paragraph 1, Letter c)).

Section 64

Consequences of Nonfulfillment

In the event the court-confirmed settlement has not been fulfilled, despite the fact that the debtor was reminded to do so by a creditor through the vehicle of a registered letter and given at least eight days to accomplish supplemental fulfillment, any reductions and other advantages granted to the debtor in the settlement become null and void and this becomes true for all creditors; the rights spelled out in the settlement to prosecute other individuals are retained.

Section 65

Consequences of Fraudulent Proceedings

(1) The creditors are authorized to demand full satisfaction of their claims if settlement was accomplished through fraudulent means or by granting special advantages to individual creditors. A creditor may assert his entitlement for complete satisfaction of his claim or may demand that special advantages are ruled to be ineffective within a period of three years from the date of the decree confirming the settlement. In doing so, he does not forfeit any rights accruing to him as a result of the settlement. However, this entitlement does not accrue for creditors if they participated in fraudulent proceedings or entered into unpermitted agreements or if they were able to assert invalidating reasons during the proceedings confirming the settlement.

(2) If, within three years of the confirmed settlement, the debtor was legally sentenced for committing a deliberate criminal act which led to the settlement or which resulted in shorting his creditors, the settlement becomes invalid and the creditors can feel free to demand satisfaction of their claims. The invalidity of the settlement does not impact on the rights which accrue to them as a result of the settlement.

Section 66

Halting and Termination of Settlement

(1) The court shall halt settlement by decree:

a) if the debtor withdraws his proposal for settlement prior to the initiation of the settlement proceedings or if the proposal was accepted by the creditors within 90 days of the granting of the permission to settle; the court may appropriately extend this time limit in the event the settlement involves an economically important enterprise and if the public interest requires that the deadline be extended;

b) if the decree which refused to confirm settlement has become legal;

c) if all of the heirs of the debtor have not stated their approval with the offered settlement (Section 60, Paragraph 2) by the time the settlement proceedings are initiated.

(2) The decree designed to stop settlement is published on the official bulletin board of the court and by other suitable means. At the same time, the court shall notify those organs entrusted with maintaining the commercial register and the records of real estate that it has stopped the settlement proceedings.

(3) The court shall proclaim, by decree, that the settlement has been terminated as soon as the resolution confirming settlement has become legal. This decree is not delivered to the participants and is not subject to any appeal; the provisions of Paragraph 2 apply to publication of this decree, to the making of appropriate entries, and to the various notifications.

(4) After stopping the proceedings or after termination, the court shall rule, by decree, on the remuneration payable to the administrator on covering his expenses and shall deliver the decree to the debtor as well as to the administrator. If, within 15 days of halting the proceedings, there is a declaration of bankruptcy, then the expenditures of the settlement shall form part of the bankruptcy expenditures.

PART FOUR. Common, Transitional, and Concluding Provisions

Section 67

(1) Within one year of the effective date of this law, the court may only proclaim bankruptcy for reasons of excessive indebtedness on the part of the debtor. A prerequisite for proclaiming bankruptcy on the basis of a proposal submitted within this time limit by a creditor, who is a state enterprise or a commercial company enjoying the exclusive property participation of the state, is agreement on the part of the founder-creditor, following a statement by the founder-debtor.

(2) In the event the founder-debtor does not take a position with respect to the proposal to initiate proceedings within 30 days, it is assumed that he agrees with the proposal.

Section 68

(1) Items which are to be turned over to authorized individuals according to laws regulating the mitigation of some property injustices[7] are included among the assets only if such entitlements were not asserted within the time limit stipulated by the law or had been rejected.

(2) The bearers of claims for compensation in accordance with regulations listed in Paragraph 1 above are considered to be priority creditors (Section 54).

Section 69

(1) If an international agreement, which is binding upon the Czech and Slovak Federal Republic and which has been published in the Collection of Laws [Sb.] does not stipulate otherwise, the bankruptcy proceedings proclaimed by the court are also applicable to the movable property of the bankruptee located abroad.

(2) If the debtor's property abroad has become the subject of bankruptcy and if bankruptcy has not been proclaimed by a Czechoslovak court, then the bankruptee's movable chattels, located on the territory of the Czech and Slovak Federal Republic, shall be turned over to a foreign court upon its request, in the event that court is a state court which adheres to the provisions of mutuality. However, the bankruptee's property cannot be handed over to foreign interests until the right to exclude certain items from the assets and the right to separate satisfaction (Section 28) which have accrued prior to the receipt of the request by the foreign court or another appropriate organ have been satisfied.

Section 70

Any proceedings regarding the liquidation of property in accordance with Sections 352 through 355 of the Civil Judicial Code[1], which have already been initiated, shall be concluded by the court in accordance with existing regulations.

Section 71

The Ministry of Justice of the Czech Republic and the Ministry of Justice of the Slovak Republic shall modify the following provisions by decree:

a) details governing the listing of administrators, special administrators, settlement administrators, and deputy administrators and their remuneration in bankruptcy and settlement proceedings;

b) the agenda for bankruptcy and settlement proceedings.

Section 72

The provisions of Sections 352 through 354 of Law No. 99/1963 Sb. of the Civil Judicial Code are rescinded.

Section 73

Effective Date

This law becomes effective on 1 October 1991.

Footnotes

1. Law No. 99/1963 Sb. of the Civil Judicial Code as modified by subsequent regulations.

2. Section 91, Paragraph 2, of Law No. 99/1963 Sb. of the Civil Judicial Code as modified by subsequent regulations.

3. Law No. 92/1991 Sb. on conditions for transferring state property to other persons.

Law No. 171/1991 Sb. of the CNR [Czech National Council] on the jurisdiction of organs of the Czech Republic in matters of transferring state property to other persons and on the Fund of National Property of the Czech Republic.

Law No. [number not published]/1991 Sb. of the SNR [Slovak National Council] on the jurisdiction of organs of the Slovak Republic in matters of transferring state property to other persons and on the Fund of National Property of the Slovak Republic.

4. Section 116 of the Civil Code No. 40/1964 Sb. as modified by subsequent regulations.

5. Section 149, Paragraph 4, of the Civil Code.

6. Section 80, Letter c), and Section 268 of the Civil Judicial Code.

7. For example, Law No. 403/1990 Sb. on mitigating the consequences of some property injustices, as discussed in Law No. 458/1990 Sb. and Law No. 137/1991 Sb.

Law No. 87/1991 Sb. on extrajudicial rehabilitations.

Law No. 229/1991 Sb. on regulating land ownership and other agricultural property.

Law on Trade Union Assets

Text of Law

91CH0776A Budapest MAGYAR NEMZET in Hungarian 17 Jul 91 p 7

["Text," without the supplements, of Law No. XXVIII/1991 on the protection of trade union assets, labor's right to organize, and equal opportunity for labor organizations enacted by the National Assembly on 12 July]

[Text] As a result of decisions made under the previous social system, the property relations of organizations representing labor and safeguarding its interests have become unclear. The legal confusion is jeopardizing these organizations' ability to function and is an obstacle to exercising the constitutionally guaranteed right to organize. To remedy this situation, the National Assembly hereby enacts the following law.

Section 1

All organizations that represent labor's interests and are registered pursuant to Law No. II/1989 on the Right of Association and Assembly (hereinafter: the trade unions) fall within the scope of the present law.

Section 2

1. Every trade union is required to file a return of its assets.

2. This obligation to file a return applies to the following assets:

a) Real estate property;

b) Fixed assets whose book value exceeded 200,000 forints at the time when the present law became effective;

c) Protected works of art;

d) The trade union's stake or equity in an enterprise it founded or in a business association in whose management it is actively participating;

f) Securities;

g) The cash in bank accounts or handled some other way; and

h) The assets placed in a foundation.

Section 3

As spelled out in Supplement 1 of the present law, the obligation to file a return of assets applies to the financial situation that existed on 1 January 1991 and the day the present law became effective.

Section 4

On the basis of the "Statement of Completeness" contained in Supplement 2 of the present law, the official filing the return is responsible for the return's completeness and veracity.

Section 5

1. The returns must be filed with the Office of the State Auditor General by 31 August 1991.

2. The Office of the State Auditor General audits the returns, comments on the veracity and completeness of each return, reports to the National Assembly by 30 November 1991 on the results of the returns, and sends the returns to the Interim Trustee Organization (hereinafter: the VIKSZ).

3. The Office of the State Auditor General must send every trade union a copy of its report.

Section 6

1. Until the law pursuant to Section 10, Paragraph 2, becomes effective, a restraint on alienation and encumbrance shall apply to the assets specified in Section 2, Paragraph 2, Item a); and a restraint on alienation, to the assets specified in Section 2, Paragraph 2, Item d). Any departure from these restraints is possible only in accordance with the provisions of Section 9, Paragraph 2.

2. The restraints specified in Paragraph 1 do not affect the contents of already concluded contracts involving assets specified in Section 2, Paragraph 2, Items a) and d).

Section 7

1. The aggregate of all assets that must be included in the returns has to be regarded as the stock of assets to be distributed among the trade unions.

2. Until the final distribution of the stock of assets among the trade unions, the VIKSZ shall exercise the authority specified in Section 8 over the following assets:

a) The assets enumerated in Section 2, Paragraph 2, that had been owned by the National Council of Trade Unions prior to 2 March 1990 and were placed at the disposal of trade unions at the time the present law became effective;

b) Any of the assets enumerated in Section 2, Paragraph 2, that the official filing the return failed to include in the return; and

c) State-owned real estate property that the trade unions are using and enjoying free of charge.

Section 8

To provide the resources that labor needs to organize and labor organizations need for equal opportunity to operate, to perform the functions common to all trade

unions, to protect trade union assets and to ensure the prerequisites for its own operation, the VIKSZ is vested with authority as follows:

a) To dispose of the assets specified in Section 7, Paragraph 2, Item a), including the right to encumber and to sell or transfer them; and

b) To issue orders regarding the use and enjoyment of the assets specified in Section 7, Paragraph 2, Items b) and c).

Section 9

1. A four-member board of directors oversees the activity of the VIKSZ. The Democratic League of Independent Trade Unions, the National Association of Workers Councils, and the National Federation of Hungarian Trade Unions delegate one board member each, and the other trade union federations belonging to the Council for the Reconciliation of Interests jointly delegate the fourth board member.

2. A unanimous vote of the board of directors is needed to adopt the board's own rules of procedure, and to sell or transfer trade union assets.

3. The board of directors is required to elaborate its own rules of procedure within 30 days from the day the present law became effective.

4. A secretariat is attached to the board of directors. Without providing any separate remuneration, the secretariat may delegate its duties to the asset-managing organizations of the trade unions that fall within the scope of the present law.

Section 10

1. Allocation of the temporary use and enjoyment of the stock of assets to be distributed among the trade unions will be based on the support that the individual trade unions win in the contest among them, which is to be held within 1 year from the day the present law became effective.

2. Allocation of the temporary use and enjoyment of the stock of assets will be regulated by statute.

3. On the basis of the principles outlined in Paragraph 1, the National Assembly will enact a separate law on the final distribution of the stock of assets among the trade unions.

Section 11

1. The present law becomes effective the day of its promulgation.

2. Section 3 of Law No. LXX/1990 Terminating the Role of Voluntary Associations as Trustees is hereby amended to read as follows:

Section 3. In the case of real estate property, the right to use and enjoy that the present law provides cannot be transferred to others, unless statute specifies otherwise.

[Signed]

—Arpad Goncz, president of the Republic
—Gyorgy Szabad, speaker of the National Assembly

Legislative Intent

91CH0776B Budapest MAGYAR NEMZET in Hungarian 17 Jul 91 p 7

[Legislative intent to the trade union assets bill passed by the National Assembly on 12 July]

[Text]

General Legislative Intent

These days the composition of the assets that trade unions own or are using and enjoying is very heterogeneous. A substantial proportion of the assets was transferred to the trade unions by state agencies, enterprises, and institutions, most often in conjunction with the fact that, under the previous regime, the trade unions were performing numerous state functions unrelated to the representation of interests. Another proportion of the assets stemmed from dues collected as a result of compulsory trade union membership that was typical in recent decades. Furthermore, by no means negligible is the order of magnitude of the real estate properties that trade unions are using and enjoying free of charge even today, following the termination of the voluntary associations' role as trustees, by Law No. LXX/1990.

Labor in the party-state was 98 percent "organized," and on that basis trade union assets qualified as public property and were protected as such in criminal law.

A fundamental requirement of the change of regimes is to abolish compulsory associations and dismantle former public ownership, so that the subsequent new owners may lawfully claim the protection that the Constitution provides for property owners.

The clarification of trade union and state functions, and the practical realization of the evolving trade union pluralism are being hampered considerably by the confusion one encounters in the legislation on the books and regarding title to property. The purpose of the present bill is to promote, as one stage of a process, the resolution of the existing contradictions as well as equal opportunity for the operation of organizations representing the interests of labor.

The present bill's primary objective is to inventory the stock of assets that the trade unions own, or are using and enjoying, and to suitably protect such assets until a final decision is made regarding their purpose. A further

objective of the bill is to put in place the conditions for the administration of trade union assets during the transitional period.

Detailed Legislative Intent

Ad Sections 1-2

The bill clearly defines which organizations must file returns of their assets, and which physical assets or rights of monetary value must be included in the returns.

Ad Sections 3-4

The bill specifies the relevant dates and considerations that apply to the obligation to file a return.

Ad Section 5

In view of the nature and volume of the assets, it is warranted to entrust to the Office of the State Auditor General the auditing of the returns, and the rating of each return in terms of veracity and completeness.

The Office of the State Auditor General will inform all the parties concerned, as well as the National Assembly, of its findings.

Ad Section 6

The bill ensures that, until the final distribution of the stock of "trade union" assets accumulated under the party-state, the stock can be diminished only with the consent of all the parties concerned. To that end the bill imposes a restraint on the alienation and encumbrance of real estate property belonging to trade unions, but only a restraint on the alienation of a trade union's stake or equity in an enterprise it founded or in a business association in whose management the trade union is actively participating. In other words, temporary encumbrance of the stake or equity is permissible when necessary.

Ad Sections 7-8

As outlined in the General Legislative Intent, the bill deems it necessary to distribute among labor's old and new interest-representing organizations the stock of assets that became trade union property, within the category of public property, under the party-state.

A final decision regarding the distribution of the stock of assets cannot be made before the outcome of the contest among the free trade unions. Therefore the bill defines the stock of assets to be distributed, and defines what authority the VIKSZ will have over which assets, until their final distribution.

Ad Section 9

The bill contains provisions on the composition of the VIKSZ and on ensuring the conditions necessary for its operation. Within the VIKSZ's scope of authority, the bill requires a unanimous vote of the board of directors to sell or transfer trade union assets.

Ad Section 10

The bill specifies that the contest among the free trade unions must be held within a year. Thereafter the National Assembly will enact two separate laws: first one law to allocate the temporary use and enjoyment of trade union assets; and then another law on the final distribution of the stock of trade union assets.

Law Governing the Press

91EP0682A Warsaw RZECZPOSPOLITA (ECONOMY AND LAW supplement) in Polish 5 Aug 91 p VII

["Text" of Law Governing the Press dated 26 January 1984]

[Text] Little has remained of the original provisions of the Press Law of 26 January 1984 (DZIENNIK USTAW [Dz.U.], No. 5, Item No. 24). Since then it has been amended in 1988 (Dz.U., No. 41, Item No. 334), in 1989 (Dz.U., No. 34, Item No. 187), and again in 1990 (Dz.U., No. 29, Item No. 173). The 1990 amendments were particularly important, being linked not just to the abolition of the Main Office for the Control of Publications and Entertainment.

As a result of these changes, it has become extremely difficult to apply the Press Law, especially according to the complaints made to us by young people starting a career in publishing and journalism. Moved by their requests, we have prepared a uniform text of the law in question; it omits entirely Chapter 9, "Changes in Binding Provisions and Interim and Final Provisions," which nowadays has practically lost its significance.

* * *

Chapter 1. General Provisions

Article 1. The press, pursuant to the Constitution of the Republic of Poland, avails itself of freedom of speech and translates into reality the right of citizens to be objectively informed, openness of public life, and social control and criticism.

Article 2. The agencies of the state, pursuant to the Constitution of the Republic of Poland, provide the press with the conditions needed to enable it to exercise its functions and purposes, which also means making possible the activities of the editorial staffs of dailies and periodicals which differ in their policies, scope of subject matter, and views represented.

Article 3. Printing-plant and periodical distribution employees may not restrict or in any other way hinder the printing and acquisition of the dailies, periodicals, or other publications accepted for printing by an enterprise, by reason of their policies or contents.

Article 4.1. Agencies of the state, state enterprises and other state organizational units, and, as regards socio-economic activities, also cooperatives and persons engaging in business on their own, are obligated to provide the press with information on their activities.

4.2. Refusal to provide information is warranted solely when this concerns preserving state and official secrets or other legally protected secrets.

4.3. On the demand of the editor in chief, the refusal is provided in writing to the concerned daily or periodical within three days; the refusal should identify the office, organizational unit, or person deciding on the refusal, the date of the refusal, the daily or periodical concerned, and the kind of information subject to the refusal.

4.4. The refusal referred to in Paragraph 3 or the failure to heed the requirements of these provisions may be appealed to the Superior Administrative Court within one month; in the proceedings before the court the provisions of the code of administrative procedures concerning judicial appeals against administrative decisions apply correspondingly.

4.5. The provisions of Paragraphs 1-4 apply correspondingly to trade unions, self-government organizations, and other social organizations with regard to the tasks assigned to them by the state administration or other similar public activities.

4.6. The provisions of Paragraphs 3 and 4 do not apply to agencies of state power and administration of justice.

Article 5.1. Any citizen may, pursuant to the principle of freedom of speech and the right to criticism, provide information to the press.

5.2. No one may sustain harm or be open to an accusation by reason of providing information to the press, if he or she acts within the legally permitted limits.

Article 6.1. The press is obligated to provide a truthful presentation of the occurrences it discusses.

6.2. State agencies, state enterprises, and other state organizational units as well as cooperatives are obligated to answer press criticisms addressed to them, without brooking any unnecessary delay, but not later than within a month.

6.3. The provisions of Paragraph 2 apply correspondingly to trade unions, self-government organizations, and other social organizations insofar as they engage in public activities.

6.4. The press may not be hindered in gathering critical materials, nor may criticism be otherwise suppressed.

Article 7.1. The present law regulates the publishing and journalistic activities of the press.

7.2. As interpreted by the present law:

1) The press is defined as periodical publications which do not represent a closed and homogeneous whole and which are published at least once a year, bear a fixed title, and are numbered and dated, and in particular: dailies and periodicals, news agency services, regular telex transmissions, bulletins, radio and television broadcasts, and film newsreels. The concept of the press also includes all the mass media, whether existing or developing as a result of technological progress, including local and plant radio and television stations that disseminate periodical publications by means of print, video, audio or other dissemination media and techniques; the press also includes teams of persons and individuals engaging in journalistic activities;

2) A daily is a periodic publication or a radio or television newscast that appears more than once weekly;

3) A periodical is a periodic publication that appears not more often than once weekly, and not less often than once a year; this provision applies correspondingly to radio and television broadcasts other than those defined in Point 2;

4) A press material is any text or image published or transmitted for publication in the press, whether of an informational or a publicistic or a documentary or other nature, irrespective of the nature of the mass media serving for its transmittal, and irrespective of its kind, form, audience, or authorship;

5) A journalist is a person who engages in editing, drafting, or preparing press materials and is employed by the daily or periodical or engages in these activities on behalf of and as authorized by the daily or periodical;

6) An editor is a journalist who decides or co-decides on the publication of press materials;

7) An editor in chief is a person empowered to decide on the whole of the activities of the editorial staff;

8) The editorial staff is the unit organizing the process of the preparation (gathering, evaluation, and processing) of materials for publication in the press.

Article 8.1. A publisher may be a legal entity, an individual, or another organizational unit even if it lacks legal entity. In particular, a publisher may be a state agency, a state enterprise, a political organization, a trade union, a cooperative, a self-government or other social organization, and the Catholic Church or other denominational association.

8.2. The political organization, trade union, state enterprise, cooperative, self-government organization, social organization, Catholic Church, or other denominational association, may avail itself of its publishing rights either directly through its own publishing houses or indirectly through the mediation of other publishing houses.

Article 9. The provisions of the present law do not apply to:

1) DZIENNIK USTAW RZECZYPOSPOLITEJ POLSKIEJ, DZIENNIK URZEDOWY RZECZYPOSPOLITEJ POLSKIEJ "MONITOR POLSKI," and other official publications;

2) DIARIUSZ SEJMOWY and other reports on the activities of the Sejm and its bodies as well as the house publications of people's councils;

3) Judicial verdicts and other official publications of a similar nature;

4) Press publications of foreign diplomatic missions and consular offices as well as of the international organizations which, on the basis of international laws, treaties, and customs, avail themselves of the right to engage in publishing activities.

Chapter 2. Rights and Responsibilities of Journalists

Article 10.1. The purpose of the journalist is to serve the society and the state. The journalist is obligated to act in accord with professional ethics and the principles of social coexistence, within the legally prescribed limits.

10.2. The journalist is obligated, within the limits of his or her employment relationship, to follow the policies of the editorial staff to which he or she belongs in accordance with the appropriate provisions of the pertinent statute or house rules.

10.3. A journalist's activities that conflict with Paragraph 2 constitute a violation of his or her employment obligations.

Article 11.1. The journalist is entitled to obtain information to the extent referred to in Artricle 4.

11.2. The provision of information about organizational units is the responsibility of their directors, deputy directors, press spokesmen, or other authorized persons within the limits of the responsibilities entrusted to them in that respect.

11.3. Directors of organizational units are obligated to enable journalists to establish contact with employees to freely gather information and opinions from them.

11.4. The Council of Ministers shall issue an executive order defining the procedure for providing information to the press and the related duties of press spokesmen at offices of the state administration.

Article 12.1. The journalist is obligated to:

1) Apply special care and demonstrate probity when gathering and using press materials, and especially to verify the accuracy of the information obtained or specify its source;

2) Protect the personal rights and interests of the informants acting in good faith and other confiding persons.

12.2. The journalist may not engage in clandestine advertising activities linked to expectations of personal gain from the person or organizational units concerned in the advertising.

Article 13.1. The press may not publish opinions as to the outcome of court proceedings before a judicial ruling in the first instance is pronounced.

13.2. The press may not publish personal data on or pictures of persons against whom preparatory or judicial proceedings are under way, and neither may it publish personal data on or pictures of witnesses and damaged or injured parties, unless the persons involved give their consent.

13.3. The restriction referred to in Paragraph 2 does not violate the provisions of other laws. The appropriate public prosecutor or court of law may permit, by reason of important social considerations, the publication of personal data on and photographs of persons against whom preparatory or judicial proceedings are under way.

Article 14.1. The publication or dissemination in some other manner of information perpetuated on audio or video recordings is contingent on the consent of the persons providing the information.

14.2. The journalist may not withhold from his or her informant authorization concerning literally quoted comments, insofar as they have not been already published.

14.3. The informant may, owing to important social or personal considerations, specify when and to what extent may the information provided be published.

14.4. The provision of information may not be made contingent, with the proviso of Paragraph 2, on the manner in which it is commented upon or on prior scrutiny of the prepublication text.

14.5. The journalist may not publish information if the informant is opposed to it in view of its being an official or professional secret.

14.6. Personal information or data may not be published without the consent of the concerned person, unless it is directly related to that person's activities as a public figure.

Article 15.1. The author of a press material has the right to keep his or her name confidential.

15.2. The journalist is obligated to keep confidential:

1) Data serving to identify the author of a press material, letter to the editor, or other material of a similar nature, as well as data serving to identify other persons providing published information or providing information for publication, if these persons ask to keep such data confidential;

2) Any information whose disclosure could violate the legally protected interests of third parties.

15.3. The obligation referred to in Paragraph 2 also applies to other persons employed by press publications and other organizational units of the press.

Article 16.1. The journalist is exempt from the obligation of keeping professional secrets referred to in Article 15, Paragraph 2, in the event that the information, press material, letter to the editor, o other material of a similar nature concerns the crime defined in Article 254 of the Penal Code, or if the author of or the person transmitting such material exclusively for the journalist's information expresses consent to the publication of his or her name or of the material.

16.2. The exemption referred to in Paragraph 1 also applies to other persons employed by press publications or other organizational units of the press.

16.3. The editor in chief should be kept informed to the needed extent about matters relating to the journalist's professional secrets; he may disclose the information or other material entrusted to him only in the cases referred to in Paragraph 1.

Chapter 3. The Press Council

Article 17.1. The Press Council is hereby established.

17.2. The Press Council operates under the chairman of the Council of Ministers. Its members are appointed by the chairman of the Council of Ministers for a term of three years.

17.3. The Press Council elects from among its members the chairman, his deputy, and the council secretary.

17.4. The Press Council is an advisory and consultative body in matters concerning the press and its role in the country's socioeconomic life.

17.5. The chairman of the Council of Ministers issues an executive order defining the procedure for the appointment and activities of the Press Council, and he endows it with a statute.

17.6. Members of the Press Council should be appointed from among representatives of associations and unions of journalists.

Article 18. Deleted.

Chapter 4. Organization of Press Activities

Article 19. Deleted.

Article 20.1. To be published, a daily or a periodical first has to be registered with the local voivodship court proper for the address of the publisher, hereinafter referred to as "the registration office." The procedure in these matters is governed by the provisions of the Code of Civil Procedure on nonlitigious proceedings as amended by the provisions of the present law.

20.2. The application for the registration referred to in Paragraph 1 should specify:

1) The title of the daily or periodical and the exact address of the editorial staff;

2) Personal data on the editor in chief;

3) The appellation and exact address of the publisher;

4) Frequency of publication.

20.3. When ruling on the registration of a daily or a periodical, the court provides a rationale only when so requested.

20.4. The publication of the daily or the periodical may be commenced if the registration office has not acted on the application for registration within 30 days from the date of its submission.

20.5. Changes in the data referred to in Paragraph 2 should be immediately communicated to the registration office.

Article 21. The registration office shall withhold registration if the application lacks the data referred to in Article 20, Paragraph 2, or if granting the registration constitutes a violation of the law protecting the appellations of already existing press titles.

Article 22. The registration office may suspend the publication of a daily or a periodical for a specified period of time, not longer than a year, if a crime is committed in that daily or periodical at least three times within a year.

Article 23. The registration of a daily or a periodical ceases to be valid in the event that the daily or the periodical fails to be published within a year from the day the right to publish it is acquired, its new publication date is not announced, its publication is suspended for a year, or the editors fail to request that registration be maintained.

Article 23a. The minister of justice shall issue an executive order defining the sample registration entry for dailies and periodicals and the procedure for maintaining the registry.

Article 24. The provisions governing the registration of press activities do not apply to the broadcasting activities of the Committee for Radio and Television "Polish Radio and Television" and to the activities of the Polish Press Agency and the Polish Newsreel Chronicle, whose activities are governed by separate regulations.

Article 25.1. The editorial staff is headed by the editor in chief.

25.2. The editor in chief of a daily or a periodical may be a person who is fully capacitated legally, has Polish citizenship, and is not deprived of civil rights.

25.3. The editor in chief of a daily or a periodical may not be a person who has been convicted of a crime against the fundamental political and economic interests of the Republic of Poland, unless 10 years have elapsed since the expiration of the sentencing period, or a person convicted of offenses of the same kind unless three years have elapsed since the expiration of the sentencing period [as published], or a person convicted of a crime committed out of ulterior motives, or, too, a person who has been punished at least three times for offenses defined in the Press Law. The registration office may, in cooperation with the minister of foreign affairs, exempt the editor in chief from the requirement of possessing Polish citizenship.

25.4. The editor in chief is responsible for the contents of the press materials prepared by the editorial staff and for the editorial and financial aspects of the daily or the periodical within the limits defined in the statute or by the appropriate regulations.

25.4a. In the event that the editor in chief gains press immunity, he is obligated to identify the editor who bears the responsibility referred to in Article 49a.

25.5. The editor in chief is appointed and recalled by the publisher, the parent agency of the publication, or other appropriate agency.

25.6. Attached to the editorial staff is he editorial board, unless the statute of the daily or the periodical or the appropriate regulations specify otherwise.

25.7. The editorial (program, scientific) council may also be attached to the editorial staff in the capacity of an advisory and consultative body under the editor in chief.

Article 26. Deleted.

Article 27.1. Each copy of a periodical publication, press agency release, and similar press materials should specify in the customary and obvious location on its page the following:

1) Name and address of publisher or other appropriate agency;

2) Address of the editorial offices and name and surname of the editor in chief;

3) Place and date of publication;

4) Name of the plant printing the publication;

5) Deleted;

6) International information symbol;

7) Current numbering.

27.2. The provisions of Paragraph 1 apply correspondingly to radio and television broadcasts and film newsreels.

Articles 28-30. Deleted.

Chapter 5. Rectifications and Responses

Article 31. On the request of the concerned person, legal entity, or organizational unit, the editor in chief of the concerned daily or periodical is obligated to publish gratis:

1) An objective and factual rectification of an untrue or imprecise statement;

2) An objective reply to a statement menacing personal rights.

Article 32.1. The rectification or response should be published:

1) Within seven days from the day it is received, if a daily is concerned;

2) In the next or one of the two subsequent issues, if a periodical is concerned;

3) In the next analogous broadcast, if an audio or audio-video broadcast is concerned, but not later than within 14 days from the day the rectification or response is received.

32.2. The rectification or response concerning a news item or a statement contained in a film newsreel should be published, at the expense of the producer of the newsreel, within a month, in a national daily, and a corresponding announcement should be made in the next film newsreel.

32.3. The rectification or response should additionally be published in an appropriate daily, within a month, at the request of the concerned person, at the expense of the publisher, if otherwise the possible period of time for publishing the rectification or response would exceed 6 months.

32.4. The time limits referred to in Paragraphs 1-3 do not apply if the parties reach a different agreement in writing.

32.5. Rectification in periodic publications should be published or at least signalized in the same section or column in a font of equal size and under a clearly visible heading; in other kinds of publications it should be published at a proximate time and in an analogous manner.

32.6. The text of the rectification or response received may not be abridged or otherwise altered so as to detract from its significance or distort the intention of the person sending it, unless that person's consent is first received; furthermore, the text of the rectification may not be commented upon in the same issue or the same broadcast; this does not apply to responses, and neither does this preclude a plain announcement of future polemics or elucidations.

32.7. The text of the rectification or response may not be longer than twice the size of the press-material passage which it concerns; the editor in chief may not require the rectification or response to be shorter than half a page of standard typescript.

32.8. The restrictions referred to in Paragraph 7 do not apply to rectifications or responses originating from the central and national agencies of the state, inclusive of the central offices of state administration, if they were sent by the government press spokesman.

Article 33.1. The editor in chief shall decline to publish a rectification or response if it:

1) Does not meet the requirements of Article 31;

2) Contains punishable language or violates the personal rights of third parties;

3) Is not consonant in content or form with the principles of social coexistence;

4) Undermines [as published] the facts stated in a valid judicial ruling.

33.2. The editor in chief may decline to publish a rectification or response if it:

1) Does not apply to the press material referred to;

2) Is provided by a person who is not personally affected by the facts cited in the press material in question, unless, following the demise of the directly affected person, the rectification or response originates from a person involved owing to a service relationship, joint work or activity, or ties of kinship or accountability;

3) The rectification concerns a statement that has already previously rectified;

4) The rectification or response is sent after a month from the date of publication of the press material concerned, unless the person concerned was unable to learn earlier of the press material in question, but not later than within 3 months from the date of publication of the press material concerned;

5) The rectification or response is not consonant with the requirements of Article 32, Paragraph 7, or has not been signed in a manner enabling the editors to identify its author.

33.3. When declining to publish a rectification or response, the editor in chief is obligated to immediately notify its author accordingly in writing and provide a rationale for the refusal. If the refusal is due to the reasons referred to in Paragraph 1 and Paragraph 2, Points 1-3, the passages not suitable for publication should be identified; for the thus corrected rectification or response the time limit specified in Paragraph 2, Point 4, recommences from the day the notice of refusal and the attached rationale is sent. The editors many not refuse to publish a rectification or response if it has been corrected in accordance with their suggestions.

33.4. If a plausible rectification sent by a concerned person cannot be published for reasons referred to in Paragraphs 1 and 2, the editor in chief may, upon the consent of its author, publish his own explanation serving as a kind of rectification.

33.5. The rectification or response may be signed with a pseudonym if there exist peril to life, limb, or property; in such cases the real name is confided only to the editors.

Chapter 6. Communiques and Announcements

Article 34.1. The editor in chief is obligated to publish gratis, at the proper time and place so far as the subject

matter is concerned, official communiques received from the national and central agencies of state, including the central offices of the state administration, if said communiques are sent by the government press spokesman on specifying that their publication is mandatory.

34.2. The obligation referred to in Paragraph 1 also applies to the announcements, resolutions, or implementing regulations issued on the basis of the laws in force by voivodship-level local offices of state administration and sent in in the form of concise communiques by the appropriate chairman of the voivodship people's council or the voivode with the object of publication in a local voivodship daily or periodical.[1] (Footnote 1) (Pursuant to Article 3, Paragraph 3, of the Law of 10 May 1990 Concerning the Law on Local Governments and the Law on Local Government Employees, this now concerns the corresponding gmina [rural township] offices.)

34.3. The communiques referred to in Paragraphs 1 and 2 should be published within a period of time agreed upon without altering them or publishing any attendant comments or denials [as published], or, in the event no time limit is agreed upon, in the next issue of the publication.

Article 35.1. The editor in chief of a daily is obligated to publish, in return for a fee, within a specified or agreed-upon time limit, the text of:

1) Valid judicial verdicts or other rulings that contain a clause requiring its publication;

2) Announcements by courts of law or other state institutions.

35.2. The editor in chief of a daily is obligated to publish "wanted" notices gratis, within a specified or agreed-upon time limit.

Article 36.1. The press may publish paid announcements and advertisements.

36.2. The announcements and advertisements may not conflict with the law or with the principles of social coexistence.

36.3. The announcements and advertisements must be marked in a manner that eliminates any doubt about their not being editorial matter.

36.4. The publisher and editor have the right to decline to publish an announcement or an advertisement whose form or content conflicts with the policy ["program line"] or nature of the publication.

Chapter 7. Legal Responsibility

Article 37. Responsibility for violations of law due to the publication of press materials is governed by the general rules, unless the present law specifies otherwise.

Article 37a. In the event of sentencing for a crime consisting in the publication of press material, the court may not order the forfeiture of the material in question as an additional punishment.

Article 37b. The court notifies the proper registration office about any sentencing for crimes of the kind referred to in the present chapter, immediately after the verdict becomes valid.

Article 38.1. Civil responsibility for violating the law by publishing the press material is borne by the author and the editor or another person who caused the publication of that material; this does not preclude the responsibility of the publisher. As regards material responsibility, these persons are equally accountable.

38.2. The provisions of Paragraph 1 apply correspondingly to civil responsibility for violating the law by disclosing the press material prior to its publication.

Article 39.1. The concerned person may institute a suit for publishing a rectification or a response if the editor in chief declines to publish it, if it is published in insufficient form, or if it is not published within the time limit referred to in Article 32, Paragraphs 1-4.

39.2. The litigation referred to in Paragraph 1 may not be instituted after the elapse of one year from the date of publication of the press material.

Article 40. In the event of a deliberate violation of the personal rights of an individual by publishing press materials, and in particular, in the event that the provisions of Article 14, Paragraph 6, are violated, the court may award to the injured party a suitable financial amount by way of compensation for the injury suffered.

Article 41. The publication of truthful and conscientious reports on open sessions of the Sejm and people's councils and their bodies, as well as the publication of conscientious critical appraisals of scholarly or artistic works or of other creative, professional, or public activities, serves to accomplish the purposes defined in Article 1 and remains protected by law, when such appraisals are consonant with the principles of social coexistence; this provision applies correspondingly to satires and caricatures.

Article 42.1. The editor is not responsible for the content of the news items sent in by the Polish Press Agency as well as for the content of the official communiques referred to in Article 34, and also for the content of the rulings and announcements referred to in Article 35.

42.2. The publisher and editor are not responsible for the content of the announcements and advertisements published in accordance with Article 36.

Article 43. Whoever resorts to coercion or illegal threats with the object of forcing a journalist to publish or desist from publishing press materials or to initiate or desist from initiating press intervention, is liable to the penalty of imprisonment for upward of three years.

Article 44.1. Whoever impedes or suppresses press criticism is liable to the penalty of imprisonment or a fine.

44.2. Also liable to this penalty is whoever abuses his or her position or office in order to act to the detriment of another person by reason of press criticism published in socially justified interests.

Article 45. Whoever publishes a daily or a periodical that is not registered or that has been suspended, is liable to a fine.

Article 46.1. Whoever, contrary to the obligation ensuing from the present law, refrains from publishing the rectification or response referred to in Article 31 or publishes it in a manner contrary to the requirements of the present law, is liable to a fine.

46.2. If the injured party is an individual, the fine is imposed as a result of a private accusation.

Article 47. Whoever, contrary to the obligation ensuing from Articles 34 and 35, refrains from publishing an official communique or an announcement by a court of law or other state agency, or a "wanted" notice, is liable to a fine.

Article 48. Whoever disseminates press materials subject to forfeiture or secured as material evidence, is subject to imprisonment for up to 6 months or to a fine.

Article 49. Whoever violates the provisions of Articles 3, 11, Paragraph 2, Articles 14, 15, Paragraph 2, and Article 27, is liable to a fine.

Article 49a. An editor who unwittingly permits the publication of press materials bearing the earmarks of a crime as referred to in Article 37a, is liable to a fine.

Chapter 8. Judicial Proceedings in Press Matters

Article 50. Judicial proceedings in cases ensuing from the present law are conducted in accordance with the appropriate laws, unless the present law specifies otherwise.

Article 51. Deleted.

Article 52. Claims concerning the publication of the rectification or response referred to in Article 39 are subject to judicial consideration.

Article 53.1. Cases concerning the crimes referred to in Articles 43 and 44 are subject to consideration by a voivodship court, while claims referred to in Articles 45-49a and crimes committed in the press are subject to consideration by a district court.

53.2. The minister of justice may issue an executive order naming the district courts proper for considering cases concerning the crimes referred to in Articles 45-49a and the crimes committed in the press in the area within the jurisdiction of a given voivodship court.

53.3. In cases of crimes committed by publishing press materials or crimes referred to in the present law, the local court jurisdiction is determined according to the address of the editorial staff or the publishing house, or, should that address be unknown or located abroad, according to the place on which the press materials were made public or disseminated. If proceedings on the same matter were instituted in several different courts, the proper court is the one at which the proceedings had first been initiated.

Article 54. In the event of a refusal to initiate criminal proceedings against a journalist for a crime referred to in the present law or for a crime committed in the press or for another deed associated with the exercise of the journalistic profession, or in the event that such proceedings are quashed, the court or the public prosecutor may transfer the matter for consideration solely to the appropriate journalistic court.

Article 54a. In the event of acquittal or quashing of proceedings owing to the absence of earmarks of a prohibited offense in the deed committed, compensation equal to the actually borne loss is due from the State Treasury.

Article 54b. The provisions governing legal responsibility and proceedings in press cases apply correspondingly to violations of law relating to the transmittal of human thought by means of disseminating media other than the press, regardless of the technique of dissemination, and in particular by means of nonperiodic publications and other print, audio, and video media.

Law on Foreign Investment

Warsaw DZIENNIK USTAW in Polish No 60, Item No 253, 4 Jul 91 pp 797-802

[Law dated 14 June governing joint ventures]

[Text]

Chapter 1. General Provisions

Article 1.1. The present law defines the requirements for allowing foreign entities to participate in income from the operation of enterprises on the territory of the Republic of Poland.

1.2. To operate the enterprises referred to in Paragraph 1, foreign entities may exclusively establish incorporated companies or joint-stock companies with offices on the territory of the Republic of Poland, or they may take over or acquire shares or stock in the companies operating such enterprises.

1.3. Companies with foreign participation, hereinafter referred to as joint ventures, are governed by the provisions of the Commercial Code, unless the present law specifies otherwise.

Article 2. The provisions of the present law do not violate other laws concerning the requirements for

allowing foreign entities to participate in income from the operation of enterprises on the territory of the Republic of Poland.

Article 3. Foreign entities as interpreted by the present law are, with the proviso of Article 7:

1) Physical persons domiciled abroad.

2) Legal entities domiciled abroad.

3) Others, pursuant to the legislation of foreign countries.

Chapter 2. Investing

Article 4.1. The formation of a joint venture requires a permit if:

1) The purposes of the enterprise it operates include at least one of the following:

a) Management of seaports and airfields.

b) Activities relating to middlemanship and trade in real estate.

c) Nonlicensed defense industry.

d) Wholesale trade in imported consumer goods.

e) Provision of legal advice.

2) Shares or stock are to be taken over by a state legal entity, with the exception of one-person Treasury companies, if such a legal entity contributes its share of founding (stock) capital in a nonmonetary form, that is, in the form of an enterprise, a parcel of real estate, or a part of an enterprise that is capable of accomplishing specified economic tasks, and in particular, a factory or a factory department.

4.2. The Council of Ministers may issue an executive order defining the scope of the permits referred to in Paragraph 1.

Article 5. If, by virtue of other regulations, undertaking an economic activity requires licensing or another form of permission, the joint venture is obligated to obtain that licensing or permission before commencing operations.

Article 6.1. The following operations require a permit:

1) Acquisition or takeover of shares or stock, or of stock warrants, by a foreign entity, in a joint venture with offices on the territory of the Republic of Poland, if that venture engages in operations in the domains:

a) Defined in Article 4, Paragraph 1, Point 1, or

b) Requiring licensing or another form of permission on the basis of separate regulations.

2) Extension of the enterprise's operations to at least one of the domains referred to in Article 4, Paragraph 1, Point 1, after it becomes a joint venture.

3) Conclusion, by the joint venture or on its behalf, of an agreement or agreements to utilize on Polish territory for more than six months the property of a state legal entity constituting an enterprise, a real estate parcel, or a part of an enterprise capable of implementing specified economic purposes, and in particular a plant or a plant department.

4) Takeover, by a state legal entity, of stock or shares in a joint venture, if, in order to augment founding (share) capital, that entity is to make a nonmonetary contribution represented by an enterprise, a real estate parcel, or a part of an enterprise capable of accomplishing specified economic tasks, and in particular a plant or a plant department.

6.2. The Council of Ministers may issue executive orders defining cases in which the activities referred to in Paragraph 1 and in Article 4, Paragraph 1, do not require a permit.

Article 7.1. Concerning Articles 4-6, a legal entity with offices on Polish territory which is a dependent of foreign entities is also regarded as a foreign entity.

7.2. A legal entity is considered to be a dependent if a foreign entity:

a) Owns therein directly or indirectly a majority of votes at a meeting of partners (stockholders), also on the basis of agreements with other partners and stockholders, or

b) Is authorized to appoint or recall a majority of the members of the governing bodies of that legal entity.

7.3. A legal entity is also considered a dependent if more than one-half of the membership of the governing board of that entity are at the same time members of the governing board or executive officers of a foreign entity or of another entity in a dependent status relative to the foreign entity.

Article 8. The permits referred to in Articles 4 and 6 are issued by the minister of ownership transformations on the recommendation of concerned entities, with the proviso that in the cases referred to in Article 6, Paragraph 1, Point 1, Subpoint b, that permit is granted by the licensing office.

Article 9. Legal activities performed in violation of Articles 4 and 6 are invalid.

Article 10.1. Contributions by foreign entities to the capital of the joint venture may be made in:

1) Polish currency deriving from the sale of convertible currencies in a foreign exchange bank in conformity with the currency exchange rates announced by the National Bank of Poland.

2) Nonmonetary form, on condition that the contribution be transferred to Poland or acquired in return for Polish currency deriving from the sale of convertible

currencies in a foreign exchange bank in conformity with the currency exchange rates announced by the National Bank of Poland as referred to in Paragraph 1.

10.2. The requirements defined in Paragraph 1 are also considered as satisfied in the event that the foreign entity spends on its contribution to the capital of the joint venture, entirely or in part:

1) Income from shares or stock.

2) Funds derived from the sale or annulment of shares or stock.

3) Funds due the foreign entity as a partner from a distribution of assets ensuing from the dissolution of a joint venture after meeting or securing the claims of creditors.

10.3. The minister of finance may, upon the request of the foreign entity, consent to the contribution by that entity of its share in the form of Polish currency derived from sources other than those referred to in Paragraphs 1 and 2 as well as in nonmonetary form derived from an inheritance. In consenting thereto the minister of finance may define the requirements that must be met by the foreign entity when making the contribution.

10.4. The provisions of Paragraphs 1-3 apply correspondingly to payment for shares and stock in the already existing companies, in the case referred to in Article 26, Point 1.

10.5. The activities referred to in Paragraphs 1-3 do not require a foreign exchange permit.

Article 11. Irrespective of the requirements of the Commercial Code, the governing board of the joint venture is obligated, when applying to be recorded in its Commercial Registry, to submit a declaration to the effect that the contribution by the foreign entity to the capital of the joint venture is consonant with the provisions of Article 10.

Article 12.1. The application for the establishment of the joint venture referred to in Article 4, Paragraph 1, should specify:

1) The identities of the partners, and in the event of a joint-stock company, of the founders.

2) The name and address of the joint venture.

3) The nature of the operations of the joint venture.

4) The nature and value of contributions to the capital of the joint venture.

12.2. In the case referred to in Article 4, Paragraph 1, Point 2, or in Article 6, Paragraph 1, Points 3 and 4, the application should name the parties to and nature of the agreement, and the funds involved.

12.3. In cases referred to in Article 6, Paragraph 1, Points 1, 3, and 4, the application should name the persons or entities acquiring stock or stock warrants or joining the joint venture and the quantity, kind, and value of the stock (shares) being acquired or taken over.

12.4. In the case referred to in Article 6, Paragraph 1, Point 2, the application should specify:

1) The identities of partners or stockholders that are known to the joint venture.

2) The name and address of the joint venture.

3) The nature of the operations of the joint venture.

4) The domain of activities, among those specified in Article 4, Paragraph 1, Point 1, to which the scope of operations is extended.

Article 13.1. In the case referred to in Article 4, Paragraph 1, the following should be appended to the application:

1) A document describing the legal status of the applicants.

2) A copy of the draft founding charter and statute of the joint venture or a copy of the draft agreement on the joint venture.

3) Appraised value of the nonmonetary contributions to the joint venture.

13.2. In the case referred to in Article 6 documents describing the legal status of the applicants and the agreement on (statute of) the joint venture should be appended along with a copy of the pertinent extract from the Commercial Registry.

Article 14.1. Within 30 days from the date the application is submitted the minister of ownership transformations may demand of the applicants that they submit at their expense:

1) Documents describing the financial situation of the partners.

2) A written opinion on the applicants, the joint venture, or the purpose of the agreement, presented by experts designated by the applicants upon the consent of the minister of ownership transformations.

14.2. Until the documents referred to in Paragraph 1 are provided, the processing of the application to establish the joint venture is suspended.

Article 15. The application and the documents referred to in Articles 12-14 should be submitted in the Polish language. If these documents were prepared in a foreign language, they should be submitted together with a certified copy of their Polish language translation.

Article 16.1. The permit to establish the joint venture specifies the data referred to in Article 12 and the period of time for which the permit is valid.

16.2. In consideration of protecting national interests the minister of ownership transformations may define in the permit the requirements concerning in particular the proportions between the shares of Polish and foreign entities in the founding (share) capital of the joint venture or the proportions of votes at a meeting of partners (general meeting) which the joint venture is obligated to respect.

Article 17. The minister of ownership transformations refuses to approve the application for the establishment of the joint venture if its planned operations imperil:

1) The economic interests of the state.

2) National security and national defense or the protection of state secrets.

A rationale for refusal of permit for reasons referred to in Point 2 is not required.

Article 18. The application is ruled upon within not longer than two months from the date it is submitted.

Article 19.1. The joint venture is obligated to operate in accordance with the requirements specified in the permit referred to in Article 4 and in Article 43.

19.2. On the demand of the minister of ownership transformations the joint venture is obligated to provide access to its books and records in order to determine whether its operations satisfy the requirements specified in the permit.

19.3. If the joint venture operates in a manner conflicting with the requirements specified in the permit, the minister of ownership transformations orders the elimination of such irregularities within a specified time limit and in the event that they are not eliminated he may restrict or revoke the permit.

19.4. Revocation of the permit is grounds for dissolution of the joint venture. In the event of such revocation, the minister of ownership transformations applies to the proper court of law for the dissolution of the joint venture, with the court thereupon issuing a pertinent ruling.

Article 20. In the event it is established that a foreign entity or a joint venture operates or engages in activities in violation of Article 4 or Article 6, the minister of ownership transformations may apply to the proper court of law for invalidating these activities.

Article 21. The minister of ownership transformations submits to the Sejm an annual report on the joint ventures operating in the Republic of Poland, specifying in particular the country of origin of foreign capital, the share of foreign entities in joint ventures, inclusive of controlling shares, and figures on employment at joint ventures and their output and exports, as well as information on the decisions referred to in Article 17, Point 1.

Chapter 3. Special Provisions

Article 22.1. The foreign entity is assured, on the principle of reciprocity, of being paid compensation for the part of a joint venture's assets belonging thereto, with the object of offsetting any loss sustained owing to expropriation laws or owing to the use of other means resulting in consequences tantamount to expropriation.

22.2. The principles and procedure for loss compensation are defined in separate laws.

22.3. Upon the request of the foreign entity the minister of finance on behalf of the State Treasury provides that entity with a guarantee of the payment of compensation.

22.4. If the State Treasury pays the compensation, it is entitled to the right of recourse for the full amount of the paid compensation with respect to the entity for whose encumbrances it provided the compensation guarantee.

Article 23.1. Upon obtaining a positive opinion from the concerned minister, the minister of finance may exempt a joint venture from the income tax if:

1) The contributions by foreign entities to the founding (share) capital of the joint venture exceed the equivalent of 2,000,000 ECU [European Currency Unit] as determined in accordance with the currency rates of exchange announced by the National Bank of Poland on the day the agreement to establish the joint venture is concluded or on the day of the takeover of stock or shares by foreign entities, and moreover when

2) The operations of the joint venture, in particular:

a) Are conducted in regions with a particularly high potential for structural unemployment, or

b) Facilitate the introduction of new technological solutions in the national economy, or

c) Make possible the export sales of goods and services in the amount of at least 20 percent of the volume of sales.

23.2. The minister of finance may define the requirements for granting the exemption or, owing to important economic considerations, refuse to grant the exemption.

23.3. The exemption referred to in Paragraph 1 may be applied for by the joint ventures in which foreign entities take over or acquire stock or shares by 31 December 1993.

23.4. The application for the exemption referred to in Paragraph 1 is submitted by the joint venture through the mediation of the minister of ownership transformations who, after commenting on the application, transmits it to the minister of finance. A decision on the application is made within two months from the date it is submitted.

23.5. The exemption referred to in Paragraph 1 may also be granted in the event that foreign entities acquire stock

or shares belonging to the State Treasury; in this event Article 10 applies correspondingly.

23.6. The extent of the income tax exemption may not exceed the value of the stock or shares acquired or taken over by the foreign entity. When calculating the part of the income tax exemption utilized for a given tax year, the mean annual currency purchase rate of the ECU in relation to the zloty, as announced by the National Bank of Poland, is taken as the basis.

23.7. On the request of the founders or the joint venture the minister of finance may promise granting income tax exemption even before the joint venture is established, or before its founding capital is augmented, or before new stock (shares) is taken over. The provisions of Paragraphs 1-5 apply correspondingly.

23.8. The promise referred to in Paragraph 7 is granted in the form of an administrative ruling.

Article 24. If during the period of time for which the income tax exemption applies, or within two years after the expiration of that period, the joint venture begins to become dissolved or its founding (share) capital decreases, the joint venture is obligated to pay its income tax. The tax obligation arises at the moment when an entry in the Commercial Registry is made concerning the planned dissolution of the joint venture or reduction in its founding (share) capital.

Article 25.1. The foreign entity has the right, upon payment of the tax due, to purchase in a foreign exchange bank sufficient foreign currency to equal the payments it receives from the joint venture as its share in the profits, on the basis of a certification issued by an agency authorized by the minister of finance to audit the annual financial statement (balance sheet) of the joint venture.

25.2. The foreign entity has the right to repatriate (transfer of income abroad), without having to apply for a separate foreign exchange permit, the foreign currency purchased in a foreign exchange bank pursuant to Paragraph 1.

Article 26. The foreign entity has the right, upon payment of taxes due, to purchase foreign currency in a foreign exchange bank and transfer it abroad without a separate foreign exchange permit, with respect to:

1) Funds received from the sale or annulment of stock or shares in the joint venture, taken over or acquired pursuant to Article 10.

2) Funds due the foreign entity in the event of the dissolution of the joint venture.

3) Funds received as the compensation referred to in Article 22 for expropriation or other measures resulting in consequences tantamount to expropriation.

Article 27. The compensation of those employees of a joint venture who are foreign nationals as interpreted by the foreign exchange law is subject to a 20 percent tax unless the the provisions of the international agreements binding on the Republic of Poland specify otherwise. The tax is withheld by the joint venture as the taxpayer when disbursing wages and salaries.

Article 28.1. Joint-venture employees who are foreign nationals have the right, after paying the taxes due, to purchase foreign currencies in a foreign exchange bank in return for the Polish currency constituting the remuneration paid them for their work at the joint venture. The purchase of foreign currencies takes place on the basis of certifications issued by the joint venture and specifying the remuneration paid.

28.2. Employees referred to in Paragraph 1 are entitled to transfer abroad the foreign currencies purchased pursuant to Paragraph 2 without having to apply for a separate foreign exchange permit.

Chapter 4. Amendments to Regulations in Force

Article 29. In the Law dated 16 December 1972 on the Income Tax (Dz.U. [DZIENNIK USTAW], No. 27, Item No. 147, 1989; No. 74, Item No. 443, 1989; and No. 9, Item No. 30, 1991), in Article 9, Paragraph 1, Point 21 is amended as follows:

"21) The part of the income from participation in a joint venture which is a legal entity with seat on the territory of the Republic of Poland, spent on acquiring stock or shares from the State Treasury or acquiring bonds issued by authorized Polish entities."

Article 30. In the Law dated 6 July 1982 on Guidelines for Foreign Legal Entities and Individuals Engaging in Small Scale Manufacturing on the Territory of the Polish People's Republic (Dz.U., No. 27, Item No. 148, 1989, and No. 74, Item No. 442, 1989) the following amendments are incorporated:

1) In Article 26a Paragraphs 2 and 3 are deleted.

2) In Article 27, Paragraph 1, Point 2), "by the office or entity performing the verification" is struck out and "the entity authorized by the minister of finance to audit" is inserted in lieu thereof.

Article 31. In the Law dated 15 February 1989, Foreign Exchange Law (Dz.U., No. 6, Item No. 33, and No. 74, Item No. 441, 1989) Article 13 is amended as follows:

"Article 13.1. Foreign exchange transactions and settlements and clearing of accounts between the National Bank of Poland and other banks are based on the currency exchange rates reckoned in zlotys and accounting units announced by the National Bank of Poland.

"13.2. The chairman of the National Bank of Poland may specify the maximum limits of deviations from the mean rate of exchange announced by the National Bank of Poland in all other transactions and settlements and clearing of accounts, with the exception of:

"1) Term transactions.

"2) Transactions and settlements of accounts between individuals.

"3) Transactions performed with respect to the activities referred to in Article 10.

"13.3. The manner of the application of currency exchange rates and accounting units is defined by the chairman of the National Bank of Poland."

Article 32. In the Law dated 28 December 1989 on Customs (Dz.U., No. 75, Item No. 445), in Article 14, Paragraph 1, the following Point 39 is added:

"39) The fixed assets representing the nonmonetary contribution of a foreign entity, with the proviso that they remain intact for three years beginning with the date of their customs clearance."

Article 33.1. In the Law dated 13 July 1990 on the Privatization of State Enterprises (Dz.U., No. 51, Item No. 298) the following amendments are incorporated:

1) In Article 4 Point 1) is deleted.

2) In Article 19:

a) Paragraphs 2 and 3 are deleted.

b) The existing Paragraph 4 is designated as Paragraph 2 and the second sentence therein is deleted.

3) Articles 31-36 are deleted.

4) Article 46 is deleted.

33.2. The joint ventures heretofore availing themselves of the tax exemptions under the provision referred to in Paragraph 1, Point 5, retain that exemption until the expiration of its validity. In the event that dissolution of the joint venture is is announced during the period of validity of the income tax exemption, or within three years after the expiration of that period, the joint venture is obligated to pay the tax for the period covered by the exemption. In this event the tax obligation arises at the moment the dissolution of the joint venture is announced.

Chapter 5. Provisional and Final Regulations

Article 34.1. Foreign entities operating under the Law dated 6 July 1982 on Guidelines for Foreign Legal Entities and Individuals Engaging in Small Scale Manufacturing on the Territory of the Polish People's Republic (Dz.U., No. 27, Item No. 148, 1989, and No. 74, Item No. 442, 1989) may contribute the heretofore operated enterprise as the contribution to the joint venture.

34.2. The governing board of the joint venture is obligated, when applying for inclusion in the Commercial Registry, to submit a declaration attesting that the contribution of the foreign entity to the capital of the joint venture is consonant with the provisions of Paragraph 1.

34.3. Corporations and joint-stock companies operating on the basis of the law referred to in Paragraph 1 are considered joint ventures as interpreted by the present law, if they submit appropriate declarations to the minister of ownership transformations.

Article 35. The companies established under the Law dated 23 December 1988 on Economic Activity with the Participation of Foreign Entities (Dz.U., No. 41, Item No. 325, 1988; No. 74, Item No. 442, 1989; and No. 51, Item No. 299, 1990), become joint ventures as interpreted by the present law.

Article 36. Companies in which stock or shares were made available to foreign entities under the Law dated 13 July 1990 on the Privatization of State Enterprises (Dz.U., No. 51, Item No. 298), are joint ventures as interpreted by the present law.

Article 37.1. Companies which were established under the laws referred to in Articles 34 and 35 are entitled to avail themselves of the tax exemptions and discounts granted them under these laws until the expiration dates of said discounts and exemptions, with respect to their income from the operations engaged in under these laws.

37.2. If the companies referred to in Article 35 have not started to issue invoices prior to the effective date of the present law, they are entitled to the exemptions and discounts referred to in Paragraph 1 as of the day on which the first invoice is issued, unless, during the same time, they submit a declaration to the effect that they are relinquishing these tax exemptions and discounts in return for being eligible for the right to repatriate profits under the guidelines of Article 25 of the present law.

37.3. In the event that the liquidation of a company referred to in Paragraph 1 is announced during the period for which its tax exemption applies or within three years following that period, the company is obligated to pay the tax for the period covered by the exemption. The tax obligation arises at the moment the dissolution of the company is entered in the Commercial Registry.

37.4. The repatriation of the profits of foreign entities for the sales year 1991 or earlier, takes place in accordance with the provisions of the laws referred to in Articles 34 and 35.

37.5. The companies established under the law referred to in Article 35 are eligible for exemptions from importation duties for a period of three years from the date of establishment of the company with respect to the scope of their economic activities as defined in the permits for their establishment.

Article 38. The provisions of Article 23 do not apply to the companies referred to in Articles 34-36, unless these companies have submitted the declaration referred to in Article 37, Paragraph 2, of the present law.

Article 39. Joint ventures are exempt from the provisions governing units of the socialized economy and the

provisions of Article 5, Paragraph 4, of the Law dated 12 January 1991 on Amending Certain Laws Regulating the Taxation Bases (Dz.U., No. 9, Item No. 30).

Article 40.1. The Foreign Investors' Chamber of Industry and Commerce heretofore operating on the basis of the law referred to in Article 35 shall be transformed, within 12 months from the effective date of the present law, into a chamber operating on the basis of the Law dated 30 May 1989 on Economic Chambers (Dz.U., No. 35, Item No. 195).

40.2. Until it is entered in the Registry of Economic Chambers the Foreign Investors' Chamber of Industry and Commerce shall continue to operate in accordance with its existing principles.

40.3. Unless its transformation takes place within the time limit specified in Paragraph 1, the Foreign Investors' Chamber of Industry and Commerce shall become dissolved.

Article 41.1. The Office of the Chairman of the Agency for Foreign Investments and said agency itself, established under the law referred to in Article 35, are hereby abolished.

41.2. The powers of the chairman of the agency for foreign investments, as defined by separate regulations, are transferred to the minister of ownership transformations.

41.3. The dissolution of the Agency for Foreign Investments and the transfer of the powers of its chairman to the minister of ownership transformations shall take place after three months from the effective date of the present law. The procedure for said transfer shall be defined by the chairman of the Council of Ministers.

41.4. Until the Agency for Foreign Investments is abolished, the permit-granting powers of the minister of ownership transformations are exercised by the chairman of the agency.

Article 42.1. The minister of ownership transformations in cooperation with the minister of finance and the minister of foreign economic cooperation, but not later than within three months from the effective date of the present law, shall establish, on behalf of the State Treasury, the State Agency for Foreign Investments in Poland as a one-person joint-stock company with offices in Warsaw.

42.2. The purpose of the State Agency for Foreign Investments in Poland shall be to organize and stimulate measures to enhance the interest of foreign entities in capital investment in Poland.

Article 43.1. The Law dated 23 December 1988 on Economic Activity with the Participation of Foreign Entities (Dz.U., No. 41, Item No. 325, 1988; No. 74, Item No. 442, 1989; and No. 51, Item No. 299, 1990) is hereby revoked, with the reservation of Paragraph 2.

43.2. Applications for permission to establish a joint venture that were submitted but not yet acted upon on the effective date of the present law are subject to being considered by the procedure and on the principles of the law referred to in Paragraph 1.

43.3. Permits to establish joint ventures granted on the basis of the law referred to in Paragraph 1 remain binding, with the proviso that, within six months from the effective date of the present law, the minister of finance shall adapt to its provisions—but without any adverse consequences—the requirements specified in these permits, requirements which the joint venture is expected to satisfy in its operations.

Article 44. The present law takes effect on the day of its publication.

Law Governing National Security

91P20463A Bucharest MONITORUL OFICIAL in Romanian Part I No 163, 7 Aug 91 pp 7-10

["Text" of law promulgated on 29 July on National Security]

[Text] The Parliament of Romania adopts the present law:

CHAPTER I. General Provisions

Article 1

The national security of Romania means the state of legality, equilibrium, and social, economic, and political stability necessary for the existence and development of the Romanian national state as a unitary, independent, and indivisible sovereign state, and for maintaining law and order, as well as a climate for the unlimited exercise of the basic rights, freedoms, and duties of the citizens in accordance with the democratic principles and norms established by the Constitution.

Article 2

National security is achieved by recognizing, preventing, and removing internal or external threats that can lead to attacks on the values stipulated in Article 1.

Romanian citizens, as an expression of their fidelity to the country, have the moral obligation to contribute to the achievement of national security.

Article 3

The following constitute threats to the national security of Romania:

a) plans and actions which aim at suppressing or diminishing the sovereignty, unity, independence, or indivisibility of the Romanian state;

b) actions which have as their goal, directly or indirectly, the provocation of war against the country, or civil war, the facilitation of foreign military occupation, subservience to a foreign power, or assistance to a foreign power or organization in carrying out any of these actions;

c) treason by aiding the enemy;

d) armed actions or any other violent actions which aim at weakening the power of the state;

e) espionage, the transmittal of state secrets to a foreign government or organization or to their agents, the illegal procurement or possession of secret state documents or data with a view to transmitting them to foreign governments or organizations or to their agents or for any other purpose unauthorized by law, as well as the divulging of state secrets or negligence in keeping state secrets;

f) undermining, sabotage, or any other actions which have as their goal the elimination, by force, of the democratic institutions of the state or which lead to serious violations of the basic rights and freedoms of Romanian citizens or which can adversely affect the defense capability or other such interests of the country, as well as destroying, damaging, or rendering useless the structures necessary for the proper development of socio-economic life or national defense;

g) actions which are detrimental to the life, the physical integrity, or the health of persons who have important positions in the state or representatives of other states or international organizations whose protection should be ensured while they are in Romania, on the basis of laws, treaties and conventions, as well as in accordance with international practice;

h) the initiation, organization, execution, or support in any way of totalitarian or extremist actions of communist, fascist, or Iron Guard origin, or of any other nature as well as racist, anti-Semitic, revisionist, or separatist actions which can endanger, in any way, the territorial integrity and unity of Romania, and the incitement to commit acts which can endanger order in the law-governed state;

i) terrorist acts, as well as the initiation or support in any way of any activities whose purpose is the committing of such acts;

j) attacks against a collective, carried out by any means;

k) stealing weapons, ammunition, explosive or radioactive, toxic or biological materials from units authorized to possess them, engaging in contraband of these items, producing, possessing, transferring, transporting, or using them under conditions other than those specified by law, as well as carrying arms or ammunition illegally, if this endangers national security;

l) the initiation or establishment of organizations or groups or joining or supporting them in any form, for the purpose of carrying out any of the activities enumerated in letters a-k, as well as the execution of such activities in secret by organizations or groups set up in accordance with the law.

Article 4

The provisions of Article 3 cannot be interpreted or used for the purpose of restricting or prohibiting the right to defend a legitimate cause or the right to register disagreement or protest of an ideological, political, or religious nature, or of any other type guaranteed by the Constitution or the law.

No person can be prosecuted for the free expression of his political opinions nor can he be the target of interference in his personal life, in his family, in his home or his property or in his correspondence or communications, or of attacks on his honor or reputation, if he does

not commit any of the actions that constitute, according to the present law, a threat to national security.

Article 5

National security is achieved in accordance with the laws in force and with the obligations assumed by Romania through international treaties and conventions on human rights of which it is a member.

Article 6

The state organs with functions in the area of national security are: the Romanian Intelligence Service, the Foreign Intelligence Service, the Protection and Guard Service, as well as the Ministry of National Defense, the Ministry of the Interior, and the Ministry of Justice, through specialized internal structures.

National security activity is organized and coordinated by the Supreme Council for the Defense of the Country.

Article 7

The Supreme Council for the Defense of the Country has the following functions in the area of national security:

a) it analyzes the data and information obtained and evaluates the state of national security;

b) it sets the principal guidelines for activity and approves the obligatory general measures for removing the threats specified in Article 3;

c) it determines the methods for utilizing intelligence regarding national security;

d) it analyzes reports and information on the method of applying the law on national security;

e) it approves the organizational structures, staffing, and operating regulations of the Romanian Intelligence Service, the Foreign Intelligence Service and the Protection and Guard Service;

f) it approves the operating expenditures for national security.

CHAPTER II. Intelligence Activity

Article 8

Intelligence activity related to national security is carried out by the Romanian Intelligence Service, the state organ specializing in intelligence within the country, the Foreign Intelligence Service, the state organ specializing in obtaining national security data from abroad, and the Protection and Guard Service, the state organ specializing in ensuring the protection of Romanian dignitaries and of foreign dignitaries while they are in Romania, as well as guarding their work areas and residences.

The state organs stipulated in the first paragraph are organized and operate in accordance with the law and are financed from the budget of the central state administration.

The activity of the state organs stipulated in the first paragraph is monitored by Parliament.

Article 9

The Ministry of National Defense, the Ministry of the Interior, and the Ministry of Justice organize their intelligence structures with functions specific to their fields of activity.

The intelligence activity of these organs is carried out in accordance with the provisions of the present law and is monitored by Parliament.

Article 10

National security intelligence activity is a state secret. Intelligence in this area can be communicated only under the conditions of the present law.

Article 11

National security intelligence can be communicated:

a) to the president of the Senate, to the president of the Chamber of Deputies, as well as to the permanent commissions for defense and for ensuring public order in the two chambers of Parliament;

b) to the ministers and the department chiefs in the ministries when the intelligence involves matters connected with the fields of activity which they coordinate or for which they are responsible;

c) to the prefects, the mayor general of the Capital, as well as the heads of the county councils and the Bucharest Municipality council for matters which are within the jurisdiction of the respective organs;

d) to the organs of penal prosecution when the intelligence deals with the perpetration of an infraction of the law.

The communication of intelligence is approved by the heads of the organs with national security functions.

The provisions of Article 10 on the protection of state secrets are applied, correspondingly, to all persons stipulated in Paragraph 1, letters a-d.

Article 12

No one has the right to divulge secret activities related to national security by taking advantage of unrestricted access to intelligence, the right to disseminate it, and the freedom to express opinions.

The divulging by any means of secret data and information which can be detrimental to the interests of national security is prohibited and the guilty parties will be held responsible in accordance with the law.

The provisions of paragraphs 1 and 2 do not affect freedom of opinion or the right of a person not to be interferred with in any way because of his opinions and the right to seek, receive, and disseminate information

and ideas, by any means of expression, if these rights are exercised in accordance with the laws of Romania.

Article 13

The situations stipulated in Article 3 constitute the legal basis for requesting from the public prosecutor, in justified cases and observing the provisions of the Code of Penal Procedure, authorization to carry out some actions for the purpose of collecting intelligence, such as: intercepting communications, seeking information, documents, or records which must be obtained by gaining access to a place or an item, or opening up an item; taking away and replacing an item or a document, examining it, extracting the information which it contains, as well as recording, copying, or obtaining extracts by any procedure; installing items, performing maintenance work on them, and taking them from the places where they have been placed.

The request for authorization is formulated in writing and must contain: data on or indications of the existence of one of the threats to national security stipulated in Article 3, whose prevention, discovery, or counteracting requires the issuance of a mandate; the categories of activities which require the issuance of a mandate before they can be carried out; the identification, if known, of the person whose communications must be intercepted, or of the person in possession of the information, documents, or items which must be obtained; a general description, if and when it is possible, of the place where the authorized activities will be executed; the period of validity of the mandate requested.

The certificate of authorization is issued at the request of organs with responsibility in the area of national security by the public prosecutors designated for this purpose by the attorney general of Romania.

If the public prosecutor finds that the request is justified, he issues a mandate which should contain: the approval of the categories of communications which can be intercepted, and the categories of information, documents, or items which can be obtained; if it is known, the identification of the person whose communications must be intercepted, or the person who is in possession of the information, documents, or items which must be obtained; the organ charged with the execution of the task; a general description of the place in which the mandate will be put into practice; the period of validity of the mandate.

The period of validity of the mandate cannot exceed six months. In justified cases, upon request the attorney general can extend the period of the mandate by no more than three months each time.

Any citizen who believes that he is unjustifiably damaged by the activities which are the objective of the mandate as specified in paragraphs 1-4 can address a complaint to the specially designated public prosecutor who is hierarchically superior to the prosecutor who issued the mandate.

Article 14

The mandate issued on the basis of Article 13 confers on its possessors or on the categories of authorized persons the right to possess and use the appropriate means for carrying out the authorized actions, without using physical or moral means of coercion, and also to be assisted by persons whose presence is considered to be necessary.

Article 15

In situations which require the removal of an imminent danger to national security, the activities mentioned in Article 13 can be undertaken even without the authorization stipulated by law which must be solicited as soon as possible, within 48 hours at the latest.

Article 16

The methods of obtaining intelligence necessary for national security must not be detrimental in any way to the basic rights and freedoms of citizens, their private lives, honor, or reputation, or subject them to illegal restrictions.

Every person is protected by the law against such interferences or disturbances. Persons who are guilty of initiating, transmitting, or executing such measures without a legal basis, as well as those who are guilty of the abusive application of measures for preventing, discovering, or counteracting threats to national security are held responsible before civil, administrative, or penal law, according to the case.

Any citizen who considers that his rights or freedoms have been violated by the use of the means specified in Paragraph 1 can notify any one of the permanent commissions for defense and the ensuring of public order in the two chambers of Parliament.

CHAPTER III. The Obligations and Responsibilities of the State Organs and the Public and Private Organizations

Article 17

For the purpose of achieving national security, the ministries, all the other state organs, and the organizations of the public or private sector have the following obligations, according to the law:

a) to provide the necessary assistance at the request of organs with functions in the area of national security in carrying out the tasks assigned to them and to permit these organs to have access to data in their possession which can provide information related to national security;

b) to take the necessary measures for the application of the law on national security in the fields in which they carry out their activity or in regard to issues with which they are concerned;

c) to seek the support of organs with functions in the field of national security to take the necessary measures for implementing national security in their area of activity.

Article 18

The organs and organizations which are in possession of state secrets, in accordance with the provisions of the special law, or whose activity can be considered as threats to national security, on the basis of Article 3, because of the actions considered, will prepare their own programs for preventing leaks of secret intelligence and these programs will be submitted to the Romanian Intelligence Service for special concurrence.

In accordance with the law, the head of the respective organ or organization bears the responsibility for fulfilling the obligations stipulated in Article 17 and in Paragraph 1 of the present article.

The programs of the Romanian Parliament, the Ministry of National Defense, the Ministry of the Interior, the Foreign Intelligence Service, the Protection and Guard Service, and the General Directorate of Penitentiaries, under the Ministry of Justice, in order to prevent leaks of secret intelligence are exempted from the need for special concurrence stipulated in Paragraph 1.

CHAPTER IV. Penalties

Article 19

The initiation, organization, or establishment on the territory of Romania of intelligence structures that can be detrimental to national security, support of them in any way, or membership in them, the illegal possession, manufacture, or use of specific means for the interception of communications as well as the collection and transmittal of intelligence of a secret or confidential nature, by any means, outside the framework of the law, constitute infractions and are punished by a prison term of two to seven years if the act does not constitute a more serious infraction.

Attempts are also punished.

Article 20

Carrying out without a mandate the activities subject to authorization under the conditions of Article 13, with the exception of those undertaken in the situations stated in Article 15, or exceeding the mandate given, are punished by a prison sentence of one to five years if the act does not constitute a more serious infraction.

The same penalty applies in the case of a functionary who divulges, rejects, or prevents in any way the implementation of the mandate issued under conditions specified in Article 13.

Attempts are also punished.

Article 21

Information on the private life, honor, or reputation of individuals that becomes known incidentally during the process of obtaining data necessary for national security, cannot be made public.

The divulging or use outside the legal framework, by intelligence service employees, of the data specified in Paragraph 1, constitute infractions and are punished by a prison term of two to seven years.

Attempts are also punished.

Article 22

The penal prosecution of the infractions specified in the present law is carried out by the organs of the office of the public prosecutor.

CHAPTER V. Final Provisions

Article 23

The documents of the intelligence organs and of the organs with national security functions are kept in their archives and can be consulted only under the conditions of the law.

Article 24

The personnel of the Romanian Intelligence Service, the Foreign Intelligence Service, and the Protection and Guard Service are permanent military cadres and civilian employees.

The military cadres of the organs specified in Paragraph 1 have the rights and obligations stipulated for soldiers in the Romanian Army.

The provisions of the Labor Code and the other legal norms referring to their rights and obligations are applicable for civilian employees.

Article 25

The personnel specified in Article 24, Paragraph 1, who have operational functions, carry out activities that involve the exercise of state authority and have all the rights and obligations provided for them by law.

Article 26

Employees of the intelligence organs and of those organs with national security functions cannot belong to parties or other organizations of a political or secret nature and cannot be used for political purposes.

Persons who have been found guilty of actions directed against basic human rights and freedoms cannot work in the intelligence services.

Article 27

Employees of the intelligence organs and of those organs with national security functions have an obligation to

keep state secrets and professional secrets even after they leave the service for any reason.

Article 28

The persons specified in Article 27, if they are called before the judiciary organs as witnesses, can give testimony in regard to actions and circumstances related to national security which they learned about while carrying out the functions of their job, and in connection with their job, only with the written permission of the chief of the organ to which they belong.

Article 29

As of the date that the present law goes into effect, any contrary provision is abrogated.

This law was adopted by the Senate at its session of 25 July 1991.

President of the Senate
Academician Alexandru Birladeanu

This law was approved by the Chamber of Deputies at its session of 26 July 1991.

President of the Chamber of Deputies
Dan Martian

On the basis of Article 82, letter m, of Decree-Law No. 92/1990 on the election of the Parliament and the President of Romania, we promulgate the Law on the National Security of Romania and order its publication in MONITORUL OFICIAL AL ROMANIEI.

President of Romania
Ion Iliescu
Bucharest, 29 July 1991
No. 51

Law on Activity of Trade Unions

91BA1078A Bucharest MONITORUL OFICIAL in Romanian 7 Aug 91 pp 1-5

["Text" of law promulgated on 1 August concerning the activity of the trade unions]

[Text] The Romanian Parliament passes the present law.

CHAPTER I. General Provisions

Article 1

(1) The trade unions are apolitical organizations formed for the purpose of defending and promoting the professional, economic, social, cultural, and sports interests of their memebrs and their rights as envisaged in the labor legislation and in collective work contracts.

(2) The trade unions are independent of the state bodies, political parties, and any other organizations.

Article 2

(1) Persons with employee status are entitled to organize in trade unions without any restriction or previous authorization.

(2) At least 15 persons are required to form a trade union.

(3) No one may be constrained from belonging or not belonging to, or withdraw or not withdraw from a trade union.

(4) Each person may belong to only one trade union at one time.

Article 3

Employees who are underage may belong to a trade union without permission from their legal guardians.

Article 4

Persons who legally exercise a trade or profession on their own or who are associated in cooperatives or in professional categories other than the ones envisaged in Article 2, paragraph 1, may organize in trade unions in accordance with the present law.

Article 5

Employees who hold managerial positions or positions that involve the exercise of state authority in the Parliament, government, ministries, other central bodies of the state administration, prefectures, city halls, or who hold the position of prosecutor or judge, military personnel serving in units belonging to the Ministry of Justice, and military personnel of the Defense and Interior Ministries and their units, with the exception of civilian personnel, may not form trade unions.

CHAPTER II. The Establishment, Organization, and Operation of Trade Unions

Section I. Statutes

Article 6

The establishment, operation, and dismantling of trade unions are regulated by the statute adopted by its members and in compliance with the provisions of the present law.

Article 7

(1) The trade unions' statutes will feature provisions regarding at least the following points:

a) Their purpose, name, and central office;

b) The conditions in which membership in the trade union is acquired and ceases;

c) The rights and duties of the members;

d) Membership fees and how they are paid;

e) Leadership bodies, their names, method of election and repeal, terms in office, and duties;

f) Conditions and norms of deliberation for amending the statute and adopting decisions;

g) The division, merger, or dissolution of the trade union and the distribution, conveyance, or, according to case, liquidation of its assets, with the mention that assets received in use from the state will be returned to the state;

h) Means of association into branch federations or national confederations.

(2) The statutes may not contain provisions which come into conflict with the Constitution or the law.

Article 8

(1) The trade unions are entitled to establish their own bylaws, to freely elect representatives, organize their administration and activities, and formulate their own programs of action.

(2) Public and administration authorities are forbidden to intervene in any way for the purpose of restricting or curtailing the exercise of the rights envisaged under paragraph 1.

Section II. Trade Union Management

Article 9

Romanian citizens who are members of the respective trade union, are fully capable of carrying out the position, are employed in the respective unit, and are not serving any of the respective punishments envisaged in the penal law, may be elected to the managerial bodies.

Article 10

The members of trade unions elected to management bodies are protected by the law against any form of preconditions, constrains, or limitations regarding the exercise of their functions.

Article 11

(1) For one year after the cessation of their mandate the work contract of representatives elected to trade union managerial bodies and of the persons who held such positions may not be changed or dissolved for reasons that are beyond their control, and which the law leaves up to the discretion of the employer, except with the agreement of the trade union's elected collective management.

(2) A work contract may not be dissolved at the initiative of the employer for reasons related to trade union activities.

(3) Persons whose trade union positions have been revoked for violation of statutory or legal provisions are exempted from the provisions of paragraph 1 .

Article 12

(1) A management member will preserve his previous position and job and his length of service throughout the period in which he is paid by the trade union; another person may be hired in that position, but only with a work contract for an unspecified period of time.

(2) Upon returning to their previous positions the persons envisaged in paragraph (1) will be ensured a salary that may not be lower than what they would have had if they had continued in that position.

Article 13

Collective work contracts may also feature additional rights and protective measures aside from those envisaged in Articles 11 and 12 for those elected in trade union management bodies.

Article 14

The trade union management is obligated to keep records on the number of members and on all incomes and expenses.

Section III. Acquiring Legal Entity Status

Article 15

(1) In order for a trade union to acquire a legal entity status, an especially empowered delegate of the trade union's founding members mentioned in the founding report will file a registration application with the court in whose jurisdiction the trade union is located.

(2) The original and two copies of the following documents will be appended to the registration application:

a) The trade union founding report, signed by at least 15 founding members;

b) The statute of the trade union;

c) A list of the trade union management members, including a mention of their profession and address.

Article 16

(1) Upon receiving the registration application the court is obligated to ascertain, within at the most five days of the registration:

a) Whether the documents envisaged in Article 15, paragraph 2, were deposited;

b) Whether the founding document and the trade union statute comply with the legal provisions in effect.

(2) If the requirements envisaged under paragraph 1 are met, the court will proceed to process the application and will summon the special delegate of the trade union's founding members.

(3) The court will pronounce an argumented decision to accept or reject the application.

(4) The decision will be communicated within at the most five days of being taken to the signatory of the registration application.

Article 17

(1) The court decision may be appealed.

(2) The term allowed for appeal is 15 days from the communication of the decision. For the prosecutor, the appeal term begins when the decision is pronounced.

(3) The appeal will be tried mostly in the presence of the special delegate of the trade union's founding members. The decision will be drafted and the file will be returned to the judge within five days of being pronounced.

Article 18

(1) The courts are obligated to keep special records stating the name and headquarters of the trade union, the names and addresses of the management members, the registration date, and the number and date of the final court decision accepting the registration application.

(2) The entry in the register envisaged in paragraph 1 will be done automatically as soon as the decision has become final.

Article 19

The trade union acquires legal status on the date on which the court decision accepting the registration application becomes final.

Article 20

The original copy of the founding report and the statute on which the court certifies the registration, together with one copy each of the other documents deposited will be returned to the trade union, while the second copy of all the documents envisaged in Article 15, paragraph 2, certified by the court, will be filed in its archive.

Article 21

(1) The trade union is obligated to inform the court with which it is registered, within 30 days, about any later modification in the statute and any change in the composition of the management body.

(2) The provisions of Articles 15-20 will be applied accordingly for the purpose of approving the statute modifications.

(3) The court is obligated to mention the statute modifications in the register envisaged under Artivlr 18, as well as the changes made in the composition of the trade union management team.

Section IV. Assets

Article 22

The current and fixed assets belonging to the trade unions may be used only in line with the interests of the trade union members, but may not be distributed among them.

Article 23

(1) The trade union may acquire by donation or purchase, according to the law, any kind of current or fixed assets required to fulfill the purposes for which it was founded.

(2) Real estate belonging to trade unions, other than buildings used as housing or for productive activities, will not be subject to any taxation provided they are effectively used by the trade union for the purposes envisaged in its statute.

(3) Rent, calculated in accordance with the legal provisions on housing, will be paid on state-owned buildings used by trade unions as offices.

Article 24

The current and fixed assets lawfully acquired by a trade union that are required for trade union meetings, libraries, or classes for the members may not be seized, with the exception of those needed to pay debts to the state.

Article 25

(1) In keeping with the statute conditions, the trade union may:

a) Extend material support to its members for the exercise of their profession;

b) Establish their own aid funds;

c) Draft and publish their own publications for the purpose of improving the level of knowledge of their members and defending their interests;

d) Establish and manage—in accordance with the law and in the interest of their members—cultural, educational, and research facilities in the areas of activity of the respective trade union, socioeconomic units, commercial units, and their own banking outlets for financial operations in lei and foreign currency;

e) Establish their own aid funds for their members;

f) Organize and provide material and financial sports facilities for everyone, and associations and clubs for competitive sports, as well as cultural and artistic groups.

(2) The trade unions are legally entitled to take out loans in order to finance the activities envisaged in paragraph 1.

Article 26

(1) The financial activities of the trade union organizations and of their socioeconomic units will be overseen by a commission of censors operating according to the statute.

(2) State administration bodies will monitor the financial activities of the trade unions' socioecoomic units.

Section V. Duties of the Trade Unions

Article 27

(1) In order to fulfill the purposes for which they were established, the trade unions are entitled to utilize specific means such as: negotiations, mediation or conciliation procedures for resolving disputes, petitions, protests, meetings, demonstrations, and strikes in keeping with their own statutes and the law.

(2) Confederation-type national trade unions will be consulted through designated delegates for the purpose of drafting regulations concerning labor relations, collective work contracts, social protection, and any regulations concerning the right of association and trade union activities.

Article 28

The trade union will defend its members' rights stemming from labor legislation and collective work contracts before the bodies of jurisdiction and other state or civic bodies by means of its own or designated defense.

Article 29

(1) The administration councils of the units are obligated to invite elected trade union delegations to participate in the administrative councils' discussions on matters of professional, economic, social, or cultural interest.

(2) In order to defend the social interests of their members, the trade unions are entitled to receive all the information required to negotiate collective work contracts and contracts concerning the establishment and utilization of funds earmarked for improving working conditions, labor protection and social services, and social insurance and protection.

Article 30

The trade unions of persons who legally exercise an individual profession or trade or who are associated in cooperatives, and those of professional categories other than the ones envisaged in Article 2, paragraph 1, will defend, in compliance with the law, the professional, economic, and social interests of their members in line with their specific activities.

Article 31

Upon the request of the associated trade unions, the federations and confederations may delegate representatives to negotiate with the administrative managements, to assist them, or to represent their interests in any situation.

Section VI. Relations Between Trade Unions and Their Members

Article 32

The relations between trade unions and their members are regulated by the provisions of the present law and by statutes.

Article 33

(1) Trade union members are entitled to withdraw from the trade union at any time without having to give reasons.

(2) Members who withdraw from the trade union may not demand to have their dues returned or to get back money or assets donated.

(3) Members who withdraw from a trade union according to paragraph 1 will preserve the rights won by virtue of belonging to the economic units established by the trade union to which they contributed by means of dues or in any other way.

Article 34

(1) The members of the trade union management bodies, their specialized and administrative personnel, and the personnel of the socioeconomic units belonging to them will be paid out of the trade unions' funds in keeping with their own regulations.

(2) Employees of other units may also be hired in specialized positions requiring higher qualifications; the latter will carry out their activities outside their working schedule, or may be pensioners.

(3) Persons hired according to paragraph 2 may cumulate, as per the law, their salary, pension—where applicable—and the incomes obtained from their work for the trade union.

Article 35

(1) Members elected to trade union management bodies who are directly involved in the unit as employees, are entitled to have their monthly work schedule reduced by up to five days for trade union activities.

(2) The number of those who may benefit from the provisions of paragraph 1, and the period of time applicable, will be established under the collective work contract.

Article 36

Paid trade union personnel and the personnel of socio-economic units belonging to the trade union will enjoy state social security rights. Their contribution to social security, additional pension fund, and income tax will be calculated and paid according to the law.

CHAPTER III. Reorganization and Dismantling of Trade Unions

Article 37

Trade unions may be dismantled by the decision of the legally constituted assembly of members or delegates, made in accordance with its own statute.

Article 38

(1) In case of dismantling, the trade union's assets will be distributed in accordance with the statute provisions or, in the absence of such provisions, in keeping with the decision of the dismantling assembly.

(2) If the statute did not specify the means of distributing assets, and the assembly charged with dissolution failed to make a decision in the matter, the court of the county or of Bucharest Municipality, notified by any of the trade union members, will make a decision on the assets distribution, which will be assigned either to an organization to which the trade union belonged or, if it did not belong to any organization, to another, similar trade union.

Article 39

(1) Within five days of its dismantling the leaders of the former trade union or the persons in charge of liquidating its assets are obligated to petition the court which registered it as a legal entity to enter a note on the dismantling of the trade union.

(2) After the expiration of the five-day term, any interested person may petition the court to enter the note required in paragraph 1.

(3) This note will be entered on the page and at the place where the registration was made in the special register.

Article 40

The trade union organizations may not be dismantled and their activities may not be suspended on the basis of orders issued by state administration bodies.

Article 41

If a trade union organization is reorganized, decisions concerning its assets will be made by its management bodies, unless its statute envisages otherwise.

CHAPTER IV. Forms of Trade Union Association

Article 42

(1) The trade unions are entitled to form their own structures according to units, branches, professions, or regions.

(2) Two or more trade unions in the same branch of activity or profession may associate for the purpose of forming a professional federation.

(3) Two or more professional federations from various branches of activity may associate for the purpose of forming a trade union confederation.

(4) Component trade unions may form regional unions within the framework of confederations and federations.

Article 43

(1) Trade union organizations associated as per Article 42 may acquire legal entity status in accordance with the provisions of the present law.

(2) In order to acquire legal entity status, the respective trade unions will convene the assemblies of delegates and present to them their own statutes and lists of leaders for discussion and approval.

(3) The decisions of the constituting assemblies will be presented to the county court or the Bucharest municipal court where they are located, accompanied by the documents envisaged under Article 15.

(4) The court will ascertain that the conditions stipulated under Article 15 are met, that the trade unions that are entering into an association are legal entities, and that the association assemblies were legally formed.

(5) The court decision to grant or refuse to grant legal status may be appealed within 15 days of its communication.

(6) The court will open a special register for the associated trade union organizations that fulfilled the legal formalities required for their founding and operation, based on the pattern of the one envisaged under Article 18.

(7) The provisions of Article 18, paragraph 2, will be duly applied.

Article 44

The regulations envisaged in the present law on trade unions will be applied accordingly to any other forms of trade union organization or association.

Article 45

Trade union organizations may become affiliated to similar international organizations.

CHAPTER V. Sanctions

Article 46

The following deeds constitute violations and will incur fines between 2,000-10,000 lei:

a) Furnishing incorrect data for the purpose of acquiring legal entity status for the trade union at the time of its founding, or for the purpose of the communications envisaged in Article 21, paragraph 1;

b) Violation by members of the trade union management of the obligations envisaged under Article 39.

Article 47

(1) Violations will be ascertained and sanctions will be applied by persons designated by the Ministry of Labor and Social Portection.

(2) The dispositions of Law No. 32/1968 concerning the establishment and punishment of violations will be duly applied to the violations envisaged in Article 46 of the present law.

Article 48

The following actions constitute violations and will incur six months-two years imprisonment or fines between 5,000-25,000 lei:

a) Preventing the exercise of the right to free trade union organization or association within the scope of the purposes and limitations envisaged in the present law;

b) Setting any manner of conditions or restraints designed to limit the exercise of the prerogatives inherent in the functions of the members elected to trade union management bodies.

CHAPTER VI. Final Provisions

Article 49

The court applications and procedural documents of trade union organizations or procedural documents drafted for court purposes are exempted from stamp tax.

Article 50

Within 90 days of the date of publication of the present law in Romania's MONITORUL OFICIAL the trade unions will align their own statutes with the provisions of this law.

Article 51

Law No. 52/1945 concerning the professional trade unions and later amendments, as well as any other conflicting regulations, are abrogated.

This law was passed by the Senate at its 8 July 1991 session.

President of the Senate
Academician Alexandru Birladeanu

This law was passed by the Assembly of Deputies at its 22 July 1991 session.

President of the Assembly of Deputies
Dan Martian

On the basis of Article 82, paragraph m, of Decree-Law No. 91/1990 on the election of Romania's Parliament and president, we promulgate the Trade Union Law and order its publication in Romania's MONITORUL OFICIAL.

President of Romania
Ion Iliescu

Bucharest, 1 August 1991
No. 54

Resolution on Prohibited Export, Import Items

91BA1077A Bucharest MONITORUL OFICIAL in Romanian 27 Jul 91 pp 6, 7

["Text" of Resolution on Imports, Exports System issued in Bucharest on 6 July]

[Text]

Decision on Imports, Exports Regimen

The Government of Romania decrees:

Article 1

The import of commodities is liberalized and will require automatic import licenses only for statistical purposes.

Exceptions to that rule are imports paid out of state foreign currency funds; imports involving clearing, barter, and debt recovery operations; imports for deliveries of complex installations and construction-assembly operations; imports resulting from government agreements, and imports permitted under the annex to the present decision.

Article 2

The Ministry of Economy and Finance, upon the recommendation of the Ministry of Commerce and Tourism, may set customs surtaxes on imports that could seriously harm the internal production of certain products. Such surtaxes will remain in effect until the negative influences of the imports targeted by them have been eliminated.

Customs surtaxes will be levied upon the documented recommendation of economic entities or of the associations of economic entities involved.

Article 3

The Ministry of Commerce and Tourism, upon the request of the National Bank of Romania, may set quantitative restrictions on imports when there is imminent risk of imbalance in the foreign balance of payments, or for the purpose of creating normal foreign currency reserves, in compliance with GATT-established procedure.

Article 4

The export of commodities is liberalized and will require automatic export licenses only for statistical purposes.

Exceptions to that rule are exports of commodities under contingency or subject to quantitative restrictions in the countries of destination; exports involving clearing and barter operations; deliveries of complex installations; construction-assembly projects; provisions for foreign vessels; the export of licenses and know-how; exports on credit approved by the Romanian Government, and the exports allowed under the annex to the present decision.

Article 5

The Ministry of Commerce and Tourism will establish the export contingencies and the list of items temporarily not allowed for export, for the purpose of protecting the resources required to achieve internal production and to ensure market supplies.

Article 6

Should export developments jeopardize the fulfillment of the domestic production or cause shortages of market supplies, upon the documented recommendation of economic enteties or associations of economic entities, the Ministry of Commerce and Tourism may decree additional contingencies or export restrictions.

Article 7

The Foreign Trade Department of the Ministry of Commerce and Tourism will be in charge of issuing export or import licenses and of determining contingencies.

Before issuing a license the Foreign Trade Department may ask exporters of goods manufactured by other economic entities to produce a document showing that the latter will make available the goods in the quantities specified in the application.

The Ministry of Commerce and Tourism will establish and oversee the system of imports affecting public health and environmental protection, as well as of exports of items subsidized by the state in lei and/or foreign currency.

Article 8

Export or import licenses will be issued within at the most 10 days of the filing of the license application.

Export or import licenses for commodities under contingency will be issued for a limited period of time in order to ensure that the contingencies are not blocked by economic entities who fail to carry out the operations in question.

Article 9

Reason has to be shown for turning down applications for export or import licenses. If the reason for the rejection is not among those that by law are left to the discretion of the Ministry of Commerce and Tourism, persons with a grievance may take action in accordance with the law on administrative disputes.

Article 10

The present resolution will become effective on 6 July 1991.

On the date on which the present resolution becomes effective, the Romanian Government Decision No. 6/1991 and any other conflicting resolutions are abrogated.

Prime Minister
Petre Roman
Bucharest, 6 July 1991
No. 472

List of Prohibited Items and Items Subject to Export-Import Controls in Accordance With International Commitments Assumed by Romania

a) Import

1. Arms and ammunition, with the exception of those authorized by law.

2.* Equipment, parts, and technologies that may be used to produce nuclear, chemical, or biological weapons or means of delivery for such weapons.

3.* Radioactive, chemical, and biological material and products that may be used to manufacture nuclear, chemical, or biological weapons.

4. Explosive and toxic material, with the exception of those authorized by law.

5. Narcotics and hallucinogens, with the exception of those authorized by law.

6. Military equipment, with the exception of that authorized by law.

7. Pharmaceuticals, medical equipment, and medical-technical material not authorized or recommended by the Health Ministry.

8. Documents, printed material, or recordings forbidden by law.

9. Other items that are not allowed by the legal regulations in effect, are not classified, or are in the process of being classified.

b) Exports

1. Arms and ammunition, with the exception of those authorized by law.

2.* Equipment, parts, and technologies that may be used to manufacture nuclear, chemical, or biological weapons or means of delivery for the weapons in question.

3.* Radioactive, chemical, and biological material and products that may be used to manufacture nuclear, chemical, or biological weapons.

4. Explosives and toxic material, with the exception of those authorized by law.

5. Narcotics and hallucinogens, with the exception of those authorized by law.

6. Military equipment, with the exception of that authorized by law.

7. Pharmaceuticals, medical equipment, and medical-technical material not authorized or recommended by the Health Ministry.

8. Items belonging to the cultural-national heritage, with the exception of those that have been authorized by law to be temporarily taken out of the country.

9. Precious metals, gems, and objects made of such, with the exception of those which may be legally taken out of the country.

** Items subject to export and import controls for which the competent ministries will mutually notify and consult each other concerning applications for the export and import of such products, with a view to ensuring observation of the international obligations assumed by Romania in the area of nonproliferation of means of mass destruction and delivery rockets.*

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